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File #: 162860

August 28, 2018

***VIA ELECTRONIC FILING***

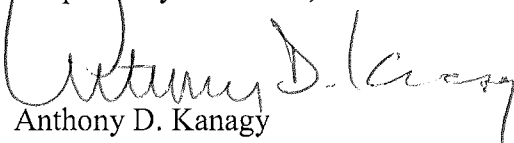
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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 Preliminary Objections of Laurel Pipe Line Company, L.P. to the Amended Complaint of Giant Eagle, Inc., et al. in the above-referenced proceeding. Copies will be provided as indicated.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr  
Enclosure

cc: Honorable Eranda Vero  
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

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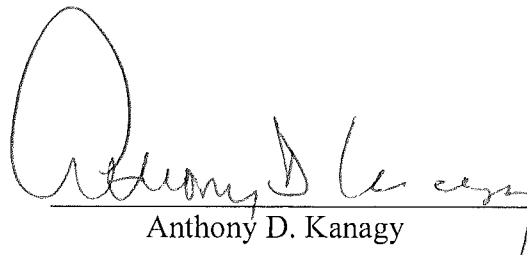
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Date: August 28, 2018

  
Anthony D. Kanagy

**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. :

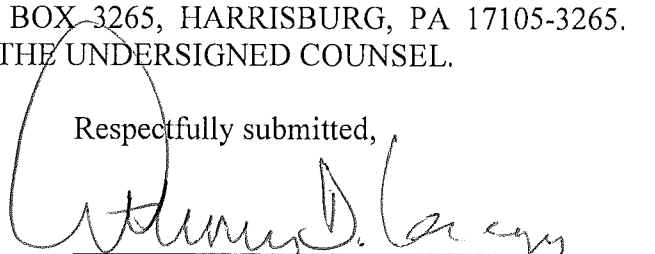
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,



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Date: August 28, 2018

*Counsel for Laurel Pipe Line Company, L.P.*

**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.	:	

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**PRELIMINARY OBJECTIONS OF  
LAUREL PIPE LINE COMPANY, L.P.  
TO THE AMENDED COMPLAINT OF GIANT EAGLE, INC., ET AL.**

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AND NOW, comes Laurel Pipe Line Company, L.P. (“Laurel”) and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Formal Amended Complaint filed by Giant Eagle, Inc. (“Giant Eagle”) Guttman Energy, Inc. (“Guttman”), Lucknow-Highspire Terminals, LLC (“LHT”), Monroe Energy, LLC (“Monroe”); Philadelphia Energy Solutions Refining and Marketing, LLC (“PESRM”), and Sheetz, Inc. (“Sheetz”) (collectively the “Complainants”) be dismissed. In support thereof, Laurel states as follows:

**I. BACKGROUND**

1. Laurel is a certificated common carrier pipeline and public utility whose intrastate service is subject to the jurisdiction of the Commission. Laurel is a Delaware Limited Partnership formed for the purpose of transporting petroleum and petroleum products through pipelines. Laurel currently owns and operates pipelines in Pennsylvania and New Jersey that

form a single pipeline system extending from Eagle Point, New Jersey to Midland, Pennsylvania.<sup>1</sup> 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 for 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 Pipe Line Company, L.P. (“Buckeye”).

2. On November 14, 2016, Laurel filed an Application with the Commission at Docket No. A-2016-2575829. The Application sought all necessary, authority, approvals and Certificates of Public Convenience, to the extent required, authorizing Laurel to change the direction of its petroleum products transportation service over the portion of its system west of Eldorado, Pennsylvania, and confirming that Laurel may, in its discretion, reinstate the current direction of service in the future without further Commission approval. On February 6, 2017, Laurel filed a Capacity Agreement at Docket No. G-2017-2857567, between Laurel and its affiliate, Buckeye. In this consolidated proceeding, Laurel set forth a proposal to reverse the direction of its petroleum products transportation service between Eldorado and Pittsburgh, such that products would only flow from the west to the east post-reversal.

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<sup>1</sup> Laurel’s pipeline system also currently transports petroleum products to locations throughout Pennsylvania. This transportation service is provided by Buckeye, pursuant to FERC-approved tariffs and a Commission-approved pipeline capacity agreement under which Laurel provides capacity to Buckeye for its interstate service. *See Laurel Pipe Line Company, L.P. – Pipeline Capacity Agreement with Buckeye Pipeline Company, L.P.*, Docket No. G-00940417 (Dec. 15, 1994), *as amended by, Laurel Pipe Line Company, L.P. – Amendment to Pipeline Capacity Agreement with Buckeye Pipeline Company, L.P.*, Docket No. G-00940417 (May 4, 2015). Laurel’s system originally consisted of pipelines extending from New Jersey to Cleveland, Ohio, and Laurel offered interstate service under tariffs filed at the Interstate Commerce Commission and then the Federal Energy Regulatory Commission, from its first operations until 1994.

3. On March 21, 2018, the Administrative Law Judge Eranda Vero issued the *Recommended Decision*.<sup>2</sup> Judge Vero recommended that the Commission deny Laurel's Application and also deny the proposed Capacity Agreement as moot.

4. On April 30, 2018, Laurel and Buckeye filed a Petition for Declaratory Order at FERC at Docket No. OR18-22-000 (the "PDO"). In the PDO, Laurel and Buckeye sought FERC approval of certain elements of a Transportation Service Agreement and associated joint tariff and rates for interstate petroleum products transportation service on Buckeye's and Laurel's pipelines. Buckeye and Laurel proposed to initiate a joint rate for interstate petroleum products transportation service for the shipment of products from origin points in Michigan, Ohio, and Pennsylvania to destination points in Ohio and Pennsylvania.

5. On June 25, 2018, Laurel and Buckeye posted on their automated pipeline scheduling system known as "T-4," which notified shippers that a temporary outage to conduct scheduled maintenance and a hydro test would commence on August 20, 2018.

6. On July 9, 2018, Laurel issued an update to the June 25 T-4 Notice that indicated the scheduled maintenance and hydro test outage would commence on August 17, 2018, and the out of service period was then estimated to be thirteen (13) days long.

7. On July 12, 2018, the Commission issued the *Final Order*<sup>3</sup> in the prior Laurel Application proceeding. The Commission adopted the recommendations of Judge Vero, except with respect to the *Recommended Decision*'s disposition of Laurel's certificate authority.

8. Also on July 12, 2018, the Complainants filed the above-captioned Formal Complaint. Simultaneously therewith, Complainants filed a Petition for Interim Emergency

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<sup>2</sup> *Application of Laurel Pipe Line Company, L.P.*, Docket Nos. A-2016-2575829 and G-2017-2587567 (Recommended Decision dated March 23, 2018) ("*Recommended Decision*").

<sup>3</sup> *Application of Laurel Pipe Line Company, L.P.*, Docket Nos. A-2016-2575829 and G-2017-2587567 (Opinion and Order entered July 12, 2018) ("*Final Order*").

Relief, which was docketed at Docket No. P-2018-3003368. The issues raised in the Complaint pertain to: (i) a proposed temporary outage on Laurel’s pipeline system to conduct certain maintenance and testing activities pursuant to federal pipeline safety standards; and (ii) Laurel’s proposed initiation of bidirectional service—*i.e.* initiating eastbound interstate service, while maintaining westbound intrastate service.

9. On July 23, 2018, a Hearing was held regarding the Petition for Interim Emergency Relief. At the hearing, the parties entered into the record a Stipulation and Settlement that resolved the issues related to the Petition for Interim Emergency Relief (“Settlement”). The Settlement was approved by written Order issued by Judge Vero on July 27, 2018.

10. Laurel timely filed Preliminary Objections to the Complaint on August 1, 2018.

11. On August 8, 2018, the Complainants filed an Amended Complaint pursuant to Section 5.91(b) of the Commission’s regulations, 52 Pa. Code § 5.91(b). The Amended Complaint modified Complainants’ claims, *inter alia*, to: (i) exclude references to any temporary outage to conduct maintenance and testing activities pursuant to the Settlement; (ii) respond to Laurel’s Preliminary Objections; and (iii) add an additional claim regarding alleged violations of Sections 1302 and 1303 of the Public Utility Code, 66 Pa. C.S. §§ 1302 and 1303.

## **II. STANDARD OF REVIEW**

12. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.

- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

13. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwltth.*, 910 A.2d 775, 781 (Pa. Cmwltth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwltth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwltth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

### **III. PRELIMINARY OBJECTION: THE COMMISSION LACKS JURISDICTION TO GRANT THE RELIEF REQUESTED**

#### **A. PRELIMINARY OBJECTION No. 1 – The Commission Lacks Jurisdiction Over An Initiation Of Interstate Service That Does Not Involve The Abandonment of Intrastate Service.**

14. Laurel incorporates by reference Paragraphs 1 through 12 as if fully set forth herein.

15. Section 104 of the Public Utility Code states:

The provisions of this part, except when specifically so provided, shall not apply, or be construed to apply, to commerce with foreign



nations, or among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

66 Pa. C.S. § 104.

16. The prior Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567 confirmed that the Commission lacks jurisdiction over a pipeline's proposal to initiate interstate service, where intrastate service over the same facilities continues to be available. Judge Vero explained that the key fact in determining whether the Commission had jurisdiction over Laurel's previously proposed reversal was an "operational sequence" that Laurel would have to follow to effect the reversal. The *Recommended Decision* explained:

It is clear from the parties' respective Briefs that Laurel treats the present proceeding as the application of a pipeline that plans to enter interstate service, while the Indicated Parties view the case as the application of an intrastate pipeline to abandon a portion of its intrastate service to enter interstate service. In simplified terms, the former is a one-step process, whereas the latter is a two-step one. Stated differently, Laurel describes the content of the Application as essentially a change in service (from intrastate to interstate, from westward to eastward) whereas, the Indicated Parties see the application first and foremost as an abandonment of intrastate service for the prospect of offering interstate service. I find that the disposition of the federal preemption issue, as well as of other aspects of the present Application, relies on this distinction.

*Recommended Decision*, p. 50 (emphasis added).

17. The Commission expressly noted and adopted the above-quoted analysis in the *Final Order*, and explained:

The ALJ initially stated that Laurel describes the Application as a change in service, from intrastate to interstate, from westward to eastward. On the other hand, the Indicated Parties view the Application as an abandonment of intrastate service to offer interstate service. The ALJ also noted that Laurel is currently an intrastate pipeline operating within Pennsylvania and must reverse the flow of product over a portion of its pipeline located between Eldorado and Pittsburgh, Pennsylvania before it can provide

interstate service. The ALJ observed that this operational fact can guide the Commission on the disposition of the federal preemption issue and the overall disposition of Laurel's Application.

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Given the applicable preemption law, we also find no merit in Laurel's argument that post-reversal, the service provided over the segment of Laurel between Midland and Eldorado, Pennsylvania will be interstate in nature, because this does not change the fact that the service Laurel proposes to abandon is currently intrastate service subject to our regulation and authority under Section 1102(a)(2) of the Code. Accordingly, we shall adopt the ALJ's decision on this issue and deny Laurel's Exceptions.

*Final Order*, pp. 20, 25 (emphasis added).

18. Laurel's proposed bidirectional service is a one-step process that does not abandon intrastate service, is consistent with the *Recommended Decision* and the *Final Order*, and is outside the scope of the Commission's jurisdiction under Section 104 of the Public Utility Code. 66 Pa. C.S. § 104. Under the bidirectional operation described in the PDO, Laurel is not abandoning westbound intrastate service before initiating eastbound interstate service.<sup>4</sup>

19. Complainants' allegations make clear that they seek Commission intervention and regulation of interstate service in violation of Section 104 of the Public Utility Code. Complainants repeatedly lament that the complained of actions by Laurel relate to the initiation of *interstate* service. *See, e.g.*, Amended Complaint, ¶ 1 (“...Laurel's recent proposal to operate the Laurel Pipeline bidirectionally, i.e., providing *intrastate* service from east to west along a portion of that pipeline while also proposing to provide *interstate* transportation service from west to east along the same segment of the pipeline...” (italics indicating emphasis in original) (underline indicating emphasis added)); Amended Complaint, ¶ 18 (“...and a conversion of the Laurel Pipeline to a bidirectional pipeline, which will continue offering east-to-west intrastate

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<sup>4</sup> Laurel's future provision of bidirectional service will also not violate the Public Utility Code because Laurel is not abandoning westbound intrastate service and because the Commission does not have jurisdiction over interstate service under Section 104.

service while simultaneously offering new west-to-east interstate service as part of the proposed Buckeye-Laurel joint tariff movements.” (emphasis added )).

20. Moreover, the Complainants admit that the proposed bidirectional service maintains existing westbound intrastate service. Amended Complaint, ¶ 18 (“This new petroleum products service will allegedly involve an expansion of Buckeye’s current interstate service from Midwestern origin points to central Pennsylvania and a conversion of the Laurel Pipeline into a *bi-directional pipeline*, which will continue offering east-to-west intrastate service while simultaneously offering new west-to-east interstate service as part of the proposed Buckeye-Laurel joint tariff movement.”) (italics indicating emphasis in original) (underline indicating emphasis added).

21. Section 104 of the Public Utility Code, 66 Pa. C.S. § 104, precludes Commission regulation of the initiation of bidirectional service because, as the Complainants concede, Laurel is initiating eastbound interstate service while maintaining westbound intrastate service.<sup>5</sup>

22. For the reasons explained above, the Commission lacks jurisdiction over the complained of initiation of bidirectional service. Therefore, the Amended Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(1).

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<sup>5</sup> 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 required by federal law 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.

**IV. PRELIMINARY OBJECTION: THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST LAUREL**

**A. PRELIMINARY OBJECTION No. 2 - The Complaint Fails to State a Claim Against Laurel Regarding The Initiation Of Bidirectional Service.**

23. Laurel incorporates by reference Paragraphs 1 through 22 as if fully set forth herein.

24. Section 701 of the Public Utility Code also makes clear that a complaint may only be filed once the complained of action or omission has occurred. It states:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 Pa. C.S. § 701 (emphasis added). The words “any act or thing done or omitted to be done” specifically refer to conduct (or a lack thereof) that has actually occurred.

25. The ripeness doctrine is a fundamental prerequisite for a court or administrative body to exercise judicial review and examine the merits of a case. *Treski et al. v. Kemper National Insurance Companies*, 674 A.2d 1106, 1113 (Pa. Super. 1996) (citing *Richard v. Trimbur*, 543 A.2d 116 (Pa. 1998)) *see also Hovis v. National Fuel Gas Distribution Corporation*, Docket No. C-2008-2035033, 2008 Pa. PUC 899, at \*6 (Initial Decision dated Nov. 10, 2008), *adopted without modification* Docket No. C-2008-2035033 (Order entered Feb. 23, 2009) (“*Hovis*”). To be ripe, an actual case or controversy must exist. *Treski*, 674 A.2d at 113. “The basic rationale underlying the ripeness doctrine is ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.’” *Philadelphia Entertainment & Development Partners v. City of Philadelphia*, 594 Pa. 468, 480, 937 A.2d 385, 392 (Pa. 2007).

26. A complaint is properly dismissed where it seeks to prevent events that are speculated to occur in the future. *See Hovis*, at \*6; *see also Mid-Atlantic Power Supply Assoc. v. PECO Energy Company*, Docket Nos. P-00981615, et al., 1999 Pa. PUC Lexis 23 (Recommended Decision dated Jan. 11, 1999) (finding that the amount of the competitive transition charge to be collected should be challenged when that amount is under review during reconciliation), *modified on other grounds*, 1999 Pa. PUC LEXIS 30 (Opinion and Order entered May 19, 1999) (“*MAPSA*”).

27. In *Hovis*, the Commission dismissed a complaint that opposed an alleged abandonment of service. *Hovis*, at \*2. The administrative law judge dismissed the complaint because it was not ripe and explained that “[r]espondent has not yet filed an application for abandonment of the subject gas line and therefore, no case or controversy exists at this time.” *Id.*, at \*6. Indeed, the complaint was not ripe because no “act or thing done or omitted to be done” that allegedly violated the public utility code had occurred.

28. Similarly, in *MAPSA*, the administrative law judge rejected claims by the Mid-Atlantic Power Supply Association that PECO would over-collect its stranded cost recovery, through a proposed competitive transition charge. *MAPSA*, at \*65-67. In rejecting these claims, the administrative law judge explained:

Not only is there the little matter of lacking evidence, there is the question of ripeness. It appears to me that any complaints as to the amount of CTC collected should be brought when that amount is under review in reconciliation. MAPSA is seeking to prevent events that it speculates will happen in the future, and so this controversy is not properly before the Commission.

*Id.*, at \*67 (emphasis added).

29. The Complainants allege, *inter alia*, that Laurel’s future initiation of bidirectional service, *i.e.* commencing eastbound interstate service and not abandoning westbound intrastate service, will violate the Public Utility Code.

30. More specifically, Complainants “believe that their existing east to west intrastate petroleum products service under the bidirectional proposal will be impaired” and ground Count No. 2 of the Complaint, at least in part, in this allegation. *See* Amended Complaint, ¶¶ 42 (emphasis added).

31. Complainants’ claims regarding the initiation of bidirectional service are not ripe.

32. Laurel does not currently provide bidirectional—*i.e.* both westbound intrastate and eastbound interstate service—service.

33. Indeed, as noted above, Complainants admit that their claims specifically relate to a future event and speculative harms. *See* Complaint, ¶ 42 (indicating their “belief” that their service “will be impaired” by some future event).

34. No “act or thing done or omitted to be done” amounting to an alleged violation of the Public Utility Code has actually occurred. Therefore, as in *Hovis*, “no case or controversy exists at this time” with respect to the provision of bidirectional service on Laurel’s pipeline system. *See Hovis*, at \*6.

35. Moreover, as the initiation of bidirectional service constitutes a future event, the Complaint seeks to prevent an event and alleged harms that “it speculates will happen in the future” and, therefore, is not properly before the Commission at this time. *See MAPSA*, at \*67.

36. In addition, Complainants’ assertions that the Commission has not taken an overly prescriptive view of the ripeness doctrine are incorrect. Amended Complaint, ¶ 32 (citing *Thomas C. States v. Pennsylvania Electric Company and United Electric Cooperative, Inc.*, 1995

Pa. PUC LEXIS 179 at \*24 (Initial Decision dated Nov. 29, 1995), *adopted without modification*, 1996 Pa. PUC LEXIS 174 (Order dated Jan. 16, 1996)) (“*States*”). In *States*, the complainant requested *inter alia* that the Commission permit him to receive service from Penelec, instead of Unilec. *See id.*, at \*1-2. The customer stated that he had recently built a house and was planning to build a garage, but the location of the garage was dependent on whether he could receive electricity from Penelec. *See id.*, at \*12-13. This question depended on “whether the Complainant's proposed garage is a separate and distinct ‘electric-consuming facility’ from his residence within the meaning of the [Unincorporated Area Certified Territory Law of 1990, 15 Pa. C.S. §§ 7351-7359] Territory Law.”

37. On brief, Penelec argued that the customer’s claims regarding the garage were not ripe because the garage did not currently exist and may never be built. *Id.*, at \*24. ALJ Corbett held that the complaint was ripe because there “is no doubt, based upon his [the complainant’s] testimony and demeanor during the hearings in this case, of his intention to build a garage.” *Id.* ALJ Corbett went on to explain that:

The only hypothetical aspect of this case concerns the location of the garage, which the Complainant forthrightly acknowledges will depend upon which utility will provide him with electric service. Therefore, little danger exists of the Commission rendering an advisory opinion on a hypothetical question, which may never come to pass.

*Id.*, at \*24-25.

38. Contrary to the scenario at issue in *States*, the Complainants are asking the Commission to reach purely hypothetical findings and conclusions regarding the provision of bidirectional service. In *States*, “no doubt” existed regarding *how* the plaintiff was allegedly aggrieved. If the complainant’s garage was a separate and distinct electric consuming facility under the Territory Law, then the complainant would be allowed to construct his garage closer to

Penelec facilities and take service from Penelec. If the complainant's garage was not a separate and distinct electric consuming facility, complainant would be forced to construct his garage closer to Unilec facilities and take service from Unilec.

39. Here, Complainants' claims are entirely based upon a hypothetical set of facts regarding the alleged "unreasonable service" and "modifications" and/or "abandonments" of service that supposedly aggrieve the Complainants. However, the Amended Complaint does not contain a single well-pleaded allegation explaining *how* existing intrastate service will be impacted Laurel's bidirectional proposal. Complainants do not allege such facts because, at this time, they cannot; bidirectional service has not yet been initiated and no such facts exist.

40. Importantly, Complainants have a remedy in the event that Laurel's future provision of bidirectional service is unreasonable: they may file a formal complaint after Laurel initiates bidirectional service. Complainants' claim that Laurel's provision of bidirectional service will violate the Public Utility Code is simply premature.

41. For the reasons explained above, even if the Commission has jurisdiction over Laurel's proposal to initiate bidirectional service, the Complainants have failed to state a claim regarding the initiation of bidirectional service, for which the requested relief can be granted. Therefore, the Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(4).

**B. PRELIMINARY OBJECTION No. 3 - Complainants' Have Failed To State A Claim That Laurel's Proposal To Initiate Bidirectional Service Is Inconsistent With Its Existing Intrastate Tariff.**

42. Laurel incorporates by reference Paragraphs 1 through 41 as if fully set forth herein.

43. Count No. 1 of the Amended Complaint asserts, *inter alia*, that Laurel's proposal to implement bidirectional service is inconsistent with and requires a modification of Laurel's



existing intrastate tariff, Laurel Pipe Line Company, L.P. – Tariff Pa. P.U.C. No. 79 (effective June 1, 2008), pursuant to Sections 1302 and 1303 of the Public Utility Code.

44. Pennsylvania law makes clear that “[p]ublic utility tariffs have the force and effect of law, and are binding on the customer as well as the utility.” *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing *Pennsylvania Elec. Co. v. Pa. Pub. Util. Comm’n*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)). As such, Complainants are bound by Laurel’s Tariff with respect to their receipt of intrastate transportation service.

45. Complainants’ have failed to state a legally sufficient claim that Laurel’s proposal to initiate bidirectional service is inconsistent with its existing tariff.

46. Laurel’s Tariff contains the following provision:

Subject to the Rules and Regulations contained herein, Commodities will be accepted for transportation at points of Origin at such times as Commodities of the same quality and specifications are currently being transported or Carrier is scheduling such Commodities for shipment from such Origins in accordance with Carrier’s sequence of pumping. Carrier reserves the right to establish and alter pumping sequences and schedules to facilitate the efficient use and operation of its facilities. Carrier may decline to accept certain Commodities with specific product grade specifications based on the operating availability of pipeline facilities or when tankage constraints or other operation conditions do not permit the acceptance of said specific Commodity product grade.

Laurel Pipe Line Company, L.P. – Tariff Pa. P.U.C. No. 79 (effective June 1, 2008), page 4, Item No. 10(B) (emphasis added).

47. Item No. 10(B) specifically reserves Laurel’s right to alter intrastate pumping sequences and schedules to facilitate the efficient use and operation of Laurel’s facilities. Laurel has altered its pumping sequences and schedules without making a tariff filing many times in the past. Laurel’s bidirectional proposal constitutes a modification of pumping sequences and schedules.

48. In addition, Laurel's Tariff is consistent with controlling Commission precedent that permits a common carrier public utility providing petroleum products transportation service may change its method of operation without first obtaining Commission approval. *See Harris v. Nat'l. Transit Co.*, 1976 Pa. PUC LEXIS 50, at \*4-5 (Order Entered Aug. 27, 1976) ("*Harris*"). In *Harris*, a petroleum products transportation pipeline providing common carrier service elected to convert its service from a pipeline and trucking transportation service to a total trucking transportation service. *Id.*, at \*3-4.

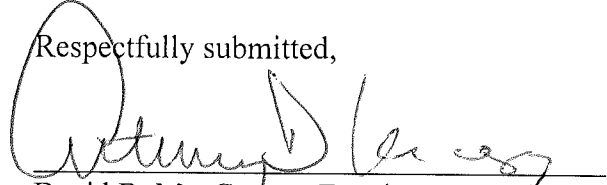
49. Laurel's bidirectional proposal clearly constitutes a permissible change in the method of operation of the segment of Laurel's pipeline between Eldorado, PA and Coraopolis, PA. Existing westbound intrastate services will be maintained under the proposal and Laurel need only alter its pumping sequences and schedules, consistent with Item No. 10(b) of its Tariff, to implement the proposal. Moreover, the proposed bidirectional service will not have any impact on the volumes that shippers can continue to transport under Laurel's intrastate tariff, and the Complaint fails to allege any reduction in such volumes.

50. For these reasons, even if the Commission has jurisdiction over Laurel's proposal to initiate bidirectional service, Complainants' have failed to state a legally sufficient claim that Laurel's bidirectional proposal is inconsistent with its existing intrastate tariff and/or Commission precedent. Therefore, Count No. 1 of the Amended Complaint should be dismissed.

V. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that the Amended Complaint be dismissed in its entirety and with prejudice.

Respectfully submitted,



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