



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

September 7, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer of the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission to the Preliminary Objections of Laurel Pipe Line, L.P. to the Amended Complaint of Giant Eagle, Inc., et al. in the above-captioned proceeding.

Copies of this filing have been served on Administrative Law Judge Eranda Vero and all parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Timothy K. McHugh".

Timothy K. McHugh
Prosecutor
PA Attorney ID No. 317906

Enclosure

cc: Michael L. Swindler, Deputy Chief Prosecutor
As per 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; and Sheetz, Inc., Complainants	:	Docket No. C-2018-3003365
	:	
v.	:	Electronically Filed
	:	
Laurel Pipe Line Company, L.P., Respondent	:	
	:	

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO
THE PRELIMINARY OBJECTIONS OF LAUREL PIPE LINE, L.P.
TO THE AMENDED COMPLAINT OF GIANT EAGLE, INC., ET AL.**

NOW COMES, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) by and through its prosecuting attorneys, and files this Answer to the Preliminary Objections of Laurel Pipe Line Company, L.P. (“Respondent” or “Laurel”), pursuant to 52 Pa. Code § 5.101(f). In support thereof, I&E avers as follows:

I. INTRODUCTION

The Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators pursuant to Section 501(a) of Act 127, 58 P.S. § 801.501(a). Act 129 of 2008, 66 Pa. C.S. § 308.2, authorizes the Commission to establish bureaus, offices, and positions to, *inter alia*, take appropriate enforcement

actions that are necessary to insure compliance with the Public Utility Code and Commission regulations and orders. In accordance with Act 129, the Commission established I&E to serve as the prosecutory bureau for the purposes of representing the Commission in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). Pursuant to Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Safety Division, which is part of I&E, also has the authority to enforce federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

I&E, through its prosecutors, has standing and authority to participate in all Commission proceedings and to initiate enforcement actions and prosecutions in the public interest.

II. BACKGROUND

On July 12, 2018, the Complainants filed the above-captioned Formal Complaint and simultaneously filed a Petition for Interim Emergency Relief at Docket No. P-2018-3003368. In their Complaint, the Complainants allege that: (i) Laurel's proposed temporary outage on its pipeline segment between Eldorado and Pittsburgh, Pennsylvania amounted to a failure to provide safe, adequate, and reasonably continuous service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501; and (ii) Laurel's proposed initiation of bidirectional pipeline transportation service along its pipeline

segment between Eldorado and Pittsburgh, Pennsylvania amounts to an abandonment of intrastate pipeline service in violation of Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, because it did not seek Commission approval for such action.

On July 23, 2018, an Emergency Hearing was held to address the Complainants' Petition for Interim Emergency Relief. At the hearing, the parties submitted to Administrative Law Judge ("ALJ") Eranda Vero a written Joint Stipulation and Settlement ("Settlement") that resolved the issues addressed in the Petition for Interim Emergency Relief. On July 27, 2018, ALJ Vero approved the Settlement and issued an Order withdrawing the Petition for Interim Emergency Relief.

On August 1, 2018, Laurel filed Preliminary Objections to the Complainants' Complaint in the above-captioned matter. Laurel's Preliminary Objections alleged the following: (i) the Commission lacks jurisdiction over an initiation of interstate service that does not involve the abandonment of intrastate service; (ii) the Complaint fails to state a claim against Laurel regarding the initiation of bidirectional service; and (iii) the Complaint against Laurel pertaining to the planned temporary outage that was to commence on August 17, 2018, is moot.

On August 8, 2018, the Complainants filed an Amended Complaint in accordance with 52 Pa. Code § 5.91. The Complainants filed the Amended Complaint to acknowledge that the Settlement entered into by the parties and approved by ALJ Vero successfully addressed the issues raised in the Complainants' Complaint relating to the proposed temporary outage of Laurel's pipeline. The Complainants' Amended Complaint also responds to Laurel's Preliminary Objections and additionally alleges

violations of the Public Utility Code at Sections 1302 and 1303, 66 Pa. C.S. §§ 1302-1303.

Laurel filed an Answer and New Matter, as well as Preliminary Objections, to the Complainants' Amended Complaint on August 28, 2018. Laurel's Preliminary Objections allege the following: (i) the Commission lacks jurisdiction over an initiation of interstate service that does not involve the abandonment of intrastate service; (ii) the Complaint fails to state a claim against Laurel regarding the initiation of bidirectional service; and (iii) the Complainants' have failed to state a claim that Laurel's proposal to initiate bidirectional service is inconsistent with its existing intrastate tariff.

I&E does not take a position regarding Laurel's second and third Preliminary Objections; it does, however, object to, and, therefore, deny Laurel's claim that the Commission does not have jurisdiction over Laurel's initiation of interstate service when abandonment of intrastate service is not involved. In doing so, I&E specifically limits its denial to invoke and preserve its jurisdiction over the east-to-west intrastate service of Laurel's transportation of petroleum and petroleum products as well as Laurel's pipeline facilities that transport such. I&E expects to address the same safety concerns that were addressed in the prior proceedings at Docket Nos. A-2016-2575829 and G-2017-2587567, and that it continues to have in the above-captioned matter due to Laurel's proposed implementation of bidirectional service on its pipeline.

III. LEGAL STANDARD

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(7). The grounds for preliminary objections are limited to the following:

- (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).

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (Order entered July 18, 1994). When considering the preliminary objection, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002); *Dept. of Auditor General, et al., v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). All of the non-moving

party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

In resolving Laurel's Preliminary Objections, only the facts pled in the Complainants' Complaint can be considered, and such facts must be accepted as true and viewed in the light most favorable to the Complainants, along with any reasonable inferences from those facts. Facts averred by Laurel cannot be considered.

IV. ANSWER TO PRELIMINARY OBJECTION No. 1 – The Commission Lacks Jurisdiction Over An Initiation Of Interstate Service That Does Not Involve The Abandonment Of Intrastate Service.

14. I&E incorporates by reference all of the statements above as if fully set forth herein.

15. Admitted. Respondent properly quotes and cites Section 104 of the Public Utility Code. 66 Pa. C.S. § 104.

16. Denied. The prior Laurel Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567 addressed the issue of whether the Commission had jurisdiction over Laurel's efforts to abandon its east-to-west intrastate service in favor of its proposed west-to-east interstate service. It did not address nor confirm "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." In fact, the *Recommended Decision* issued by Judge Vero specifically states that "Laurel's desire to operate the segment of the Laurel pipeline between Pittsburgh and Eldorado in interstate

commerce in the near future, does not preempt the Commission from exercising its authority over the pipeline's current intrastate operations." *Recommended Decision*, p. 51.

17. Admitted.

18. Denied. Paragraph 18 states several conclusions of law to which no response is required. To the extent a response is deemed to be required, I&E denies each averment contained in Paragraph 18. I&E takes no position regarding whether Laurel's proposed bidirectional service is a one-step process that does not abandon intrastate service. I&E rejects, however, the notion that Laurel's proposed bidirectional service is "outside the scope of the Commission's jurisdiction under Section 104 of the Public Utility Code" if such an averment implies that the Commission no longer has jurisdiction over the east-to-west intrastate service of petroleum products on Laurel's pipeline or of the facilities that provide said service. In 1957, the Commission issued a Certificate of Public Convenience authorizing Laurel Pipe Line Company, the predecessor in interest to Laurel Pipe Line Company, L.P., to transport, store, and distribute petroleum and petroleum products by means of pipeline. As a public utility, Laurel is subject to the Public Utility Code and the Commission's regulations.¹ Section 1501 of the Public Utility Code mandates that a public utility must "furnish and maintain adequate, efficient, safe, and reasonable service and facilities Such service and facilities shall be in conformity with the regulations and orders of the commission."² As such, I&E contends

¹ 66 Pa. C.S. § 501.

² 66 Pa. C.S. § 1501.

that the Commission maintains its jurisdiction over the east-to-west intrastate service of Laurel's transportation of petroleum and petroleum products and Laurel's pipeline facilities that transport such.

19. Denied. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

20. Denied. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further explanation, I&E is in no position to attest to what the Complainants admit or deny in their Amended Complaint.

21. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, I&E denies the averments in Paragraph 21. *See* I&E's response to Paragraph 18, above.

22. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, I&E denies the averments in Paragraph 22. *See* I&E's response to Paragraph 18, above.

V. ANSWER TO PRELIMINARY OBJECTION No. 2 – The Complaint Fails To State A Claim Against Laurel Regarding The Initiation Of Bidirectional Service.

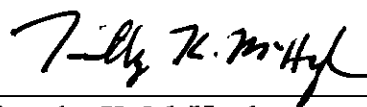
I&E takes no position regarding Laurel's Preliminary Objection No. 2. To the extent a response is deemed to be required, it is denied because the averments state a conclusion of law to which no response is required.

VI. ANSWER TO 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.

I&E takes no position regarding Laurel’s Preliminary Objection No. 3. To the extent a response is deemed to be required, it is denied because the averments state a conclusion of law to which no response is required.

WHEREFORE, the reasons stated above, the Bureau of Investigation and Enforcement of the Public Utility Commission respectfully requests that the Administrative Law Judge and Commission dismiss Respondent’s Preliminary Objections, to the extent set forth herein.

Respectfully submitted,



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PA Attorney ID No. 317906

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Dated: September 7, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

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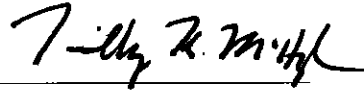
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