**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. :

:

v. :

:

Laurel Pipe Line Company, L.P. :

**ORDER ON RESPONDENT’S PRELIMINARY OBJECTION**

On July 12, 2018, Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining & Marketing LLC, and Sheetz, Inc. (collectively, Complainants) filed a Complaint (Complaint) against Laurel Pipe Line Company, L.P. (Respondent or Laurel) with the Pennsylvania Public Utility Commission (Commission) alleging 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. 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 the Respondent did not seek Commission approval for such action.

Simultaneously with the formal Complaint, on July 12, 2018, Complainants filed a Petition for Interim Emergency Relief at Docket No. P-20183003368.

On July 18, 2018, Timothy K. McHugh, Esq., filed a notice of Appearance of behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”).

On July 23, 2018, an Emergency Hearing was held to address the Complainants' Petition for Interim Emergency Relief. At the hearing, the parties submitted a written Joint Stipulation and Settlement (Settlement #1). Because the Settlement gave the Complainants the relief they requested in their Petition for Interim Emergency Relief, the Complainants agreed to withdraw their Petition in accordance with 52 Pa.Code § 5.94. Settlement # 1 ¶¶ 5, 7.

On July 25, 2018, I issued an Initial Decision granting the Complainants’ request for leave to withdraw their 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 (Amended Complaint) in accordance with 52 Pa.Code § 5.91. The Complainants filed the Amended Complaint to acknowledge that Settlement #1 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.

On August 28, 2018, Laurel filed an Answer and New Matter, as well as Preliminary Objections (Preliminary Objections), to the Complainants' Amended Complaint.

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.

On September 7, 2018, Complainants filed a timely Response to Laurel’s Preliminary Objections.

Also on September 7, 2018, I&E filed a timely Response to Laurel’s Preliminary Objections in which I&E specified that, while it does not take a position regarding Laurel's Preliminary Objections ## 2 and 3; it objects to and denies 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 the Commission’s 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.

On September 20, 2018, the Petitioners filed a second Petition for Interim Emergency Relief, Docket No. P-2018-3004857, pursuant to Section 3.6 of the regulations of the Pennsylvania Public Utility Commission against Laurel.

On September 25, 2018, an Emergency Hearing was held to address the Complainants' second Petition for Interim Emergency Relief. At the hearing, the parties reached a settlement in principle and the Complainants agreed to withdraw their Petition in accordance with 52 Pa.Code § 5.94. On October 3, 2018, the parties submitted a written Joint Stipulation and Settlement (Settlement #2).

Respondent’s Preliminary Objections are now ready for ruling.

DISCUSSION

The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa.Code §§ 5.101-5.103. Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435, 1994 Pa. PUC LEXIS 69.

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

The Commission’s regulations provide, *inter alia*:

1. *Grounds*. Preliminary objections are available to parties

and may be filed in response to a pleading except motions and

prior preliminary objections. Preliminary objections must be

accompanied by a notice to plead, must state specifically the legal

and factual grounds relied upon and be limited to the following:

1. Lack of Commission jurisdiction or improper service of

the pleading initiating the proceeding.

1. 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).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm’n,* 669 A.2d 1105 (Pa. Cmwlth. 1996), 1996 Pa. Commw. LEXIS 11. The motion may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (1985); *Commw. of Pa. v. The Bell Telephone Co. of Pa.,* 551 A.2d 602 (Pa. Cmwlth. 1988). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)). 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) 1997 Pa. Commw. LEXIS 148. Therefore, it is only the facts in the Complaint which can be presumed to be true in order to determine whether recovery is possible.

**PRELIMINARY OBJECTION # 1 – The Commission Lacks Jurisdiction Over An Initiation Of Interstate Service That Does Not Involve The Abandonment of Intrastate Service.**

In its Preliminary Objection, Laurel argues that its future provision of bidirectional service will 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 of the Public Utility Code. See Preliminary Objections, 18. In particular, Laurel explains that under its new proposal "intrastate service over the same facilities continues to be available." Preliminary Objections, 16.

In their Response to the Preliminary Objection # 1, Complainants argue that Laurel’s proposition to initiate bi-directional service between Altoona and Pittsburgh amounts to an admission that its east to west service on this section of the pipeline will be unavailable at times because service will be provided in the opposite direction (i.e., west to east). *See* Complainants’ Response, ¶ 16. In Complainants’ view, not only will the bidirectional service be a different service than what Laurel has been providing, under its current tariff, since 1957, but to the extent the east to west intrastate service continues, it will be substantially different because there will be times when the flow of product on the Laurel Pipeline will preclude desired product movements in the opposite direction. *Id.* According to the Complainants, that fact and the reduction in capacity on the Laurel Pipeline necessary at times to accommodate east to west product movement constitutes a change in "service" and a partial abandonment of previously rendered service. *Id.*

I&E’s Response to the Preliminary Objection # 1 also denies 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 the Commission’s 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’s Response further clarifies that the prior Laurel Application proceeding at Docket Nos. A-20162575829 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. I&E Response, ¶ 16. I&E explained that the prior proceeding 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." *Id.*, *citing* Preliminary Objections, ¶ 16. Instead, I&E argues that the Recommended Decision issued by me 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." *Id.*, *citing* Recommended Decision, at 51.

Upon careful review of the pleadings, I agree with the Complainants’ argument that the present Complaint is not challenging the initiation of interstate service between Pittsburgh and Altoona. Instead, the Complaint is challenging Respondent’s proposed actions which the Complainants claim to be tantamount to abandonment of existing intrastate service within that section of the pipeline.

The Commission lacks jurisdiction to regulate interstate pipeline service. 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. However, the Commission retains jurisdiction over intrastate pipeline service and requires a public utility to obtain a certificate of public convenience before abandoning or surrendering any service in whole or in part. Section 1102(a)(2) of the Public Utility Code states, in pertinent part, as follows:

(a) General rule. - Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\*...\*...\*

(2) For any public utility to abandon or surrender, in whole or in part, any service …

66 Pa. C.S. §1102(a)(2).

Whether 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. In their Amended Complaint, the Complainants clearly aver that the Respondent’s proposal to initiate bi-directional service “is in effect a partial abandonment of east to west petroleum products pipeline transportation service Laurel has been providing exclusively on the entire Laurel Pipeline since 1957.” Amended Complaint, ¶2. As explained *supra*, for the purposes of deciding the Preliminary Objection #1 this averment must be viewed as true, and any doubt must be resolved in favor of the Complainants by refusing to sustain the Preliminary Objection. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148; *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)). Consequently, Respondent’s Preliminary Objection # 1 is overruled.

## **Preliminary Objection # 2 - The Complaint Fails to State a Claim Against Laurel Regarding the Initiation of Bidirectional Service.**

In its Preliminary Objection #2, the Respondent seeks the dismissal of the Amended Complaint for failure to state a claim regarding the initiation of bidirectional service, for which the requested relief can be granted. Respondent supports this Preliminary Objection by arguing that Complainants’ claims regarding the initiation of bidirectional service are not ripe as Laurel does not currently provide bidirectional service. Preliminary Objections, ¶¶ 31-32.

According to Laurel, no “act or thing done or omitted to be done” amounting to an alleged violation of the Public Utility Code has actually occurred. Preliminary Objections, ¶ 34. Consequently, the Respondent argues that “no case or controversy exists at this time” with respect to the provision of bidirectional service on Laurel’s pipeline system. *Id.,* *citing* *Hovis v. National Fuel Gas Distribution Corporation, (Hovis)* 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).

In Laurel’s view, the Complaint seeks to prevent alleged harms related to a future event that “it speculates will happen in the future” and, therefore, is not properly before the Commission at this time. Preliminary Objections, ¶ 35, citing *Mid-Atlantic Power Supply Assoc. v. PECO Energy Company*, *(MAPSA)* Docket Nos. P-00981615, et al., 1999 Pa. PUC Lexis 23 (Recommended Decision dated Jan. 11, 1999), (Opinion and Order entered May 19, 1999) 1999 Pa. PUC LEXIS 30. As for the remedy available to the Complainants, in the event that Laurel’s future provision of bidirectional service is unreasonable, Laurel suggests that they file a formal complaint after Laurel initiates the proposed service. Preliminary Objections, ¶ 40.

In their Response to Preliminary Objection #2, the Complainants argued that the Amended Complaint does not address a hypothetical situation or require the rendering of an advisory opinion for several reasons. First, the Complainants pointed out that Laurel has been pursuing its bi-directional service objectives in several forums for several months. Complainants’ Response, ¶¶ 22-23. They explained that in the immediate wake of the Recommend Decision rejecting Laurel's Application at Docket No. A-2016-2575829 and G-2017-2587567, Laurel issued a press release and Buckeye informed its investors that Laurel (and Buckeye) would be pursuing bi-directional service using Laurel's Commission-jurisdictional pipeline. Complainants’ Response, ¶ 23. Laurel then joined with its affiliate, Buckeye, to file a Petition for Declaratory Order (PDO) with the FERC in pursuit of Laurel's and Buckeye's bi-directional service objectives. *Id.* Moreover, Laurel has commenced construction of pump stations in pursuit of its bi-directional objectives. *Id.* In particular, Laurel has scheduled and cancelled one, and has scheduled another, hydrostatic pressure test of the pipeline segment between Eldorado and Pittsburgh in pursuit of its bidirectional objectives. Complainants’ Response, ¶ 23. Laurel has allocated pipeline shipments from eastern supply sources to Pittsburgh during August (until its first hydrotest was rescheduled) and then did so again for September to accommodate the hydrotesting it claims is required to commence bi-directional service. *Id.* Finally, Laurel has declared its bi-directional service to be contingent on FERC, but not Commission approval.  *Id.*

According to the Complainants, Laurel’s actions described above, combined with many assertions in Laurel's pleadings before this Commission and FERC, leave no doubt that Laurel will be implementing bi-directional service absent regulatory intervention and that the Complainants' claims are tangible, present, and increasing over time. Complainants’ Response, ¶¶ 22-23.

Second, the Complainants argue that they are already experiencing the direct adverse impact of Laurel's bi-directional objectives. Complainants’ Response, ¶¶ 22, 24. The Complainants maintain that they were harmed beginning in mid-July when they needed to resort to alternative supply arrangements due to a hydrotest that Laurel had scheduled for mid-August. Complainants’ Response, ¶ 24. They explain that those alternative supply arrangements were, in large part, "stranded" when the hydrotest was cancelled for August and immediately rescheduled for September. *Id.* That cycle repeated itself in August, when the Complainants were forced into alternative supply arrangements to accommodate a hydrotest that is now scheduled for mid-September, notwithstanding the absence of any regulatory approvals of bi-directional service. *Id.*

Third, the Complainants maintain that Laurel's failure to seek Commission approval of its bidirectional objectives is a failure that has already occurred. They distinguish the present case from the circumstances addressed in the *Hovis* and *MAPSA* by pointing out that in the present case the controversy lies in Laurel’s declarations that the Commission' s review and approval is not required for commencement of Laurel's bi-directional service. Complainants’ Response, ¶ 25.

A case must be ripe for adjudication before it can be heard. *Woods Schools v. Department of Education*, 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986); *Sgarlat v. Board of Adjustment of Kingston Borough*, 407 Pa. 324, 180 A.2d 769 (1962). There must be actual, palpable injury before a case will be ripe for adjudication. [*Concerned Taxpayers v. Commonwealth of Pennsylvania*, 33 Pa. Commonwealth Ct. 518, 382 A.2d 490 (1978).](https://advance.lexis.com/document/?pdmfid=1000516&crid=744c8fb9-f891-4b46-83c3-ba75f4ac345a&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-materials%2Furn%3AcontentItem%3A3SF5-PRC0-001J-C0CN-00000-00&pddocid=urn%3AcontentItem%3A3SF5-PRC0-001J-C0CN-00000-00&pdcontentcomponentid=139838&pdteaserkey=sr0&pditab=allpods&ecomp=5pkLk&earg=sr0&prid=20369c7e-2699-4f94-a5de-4d28dec3d857) Hence, hypothetical or abstract questions are precluded. *Raezer v. Raezer*, 428 Pa. 163, 236 A.2d 513 (1968); *Silver v. Zoning Board of Adjustment*, 381 Pa. 41, 112 A.2d 84 (1955). This requirement applies with equal force to formal proceedings before administrative agencies. *Process Gas Consumers Group v. Pa. P.U.C.*, 84 Pa. Commonwealth Ct. 76, 480 A.2d 1273 (1984).

The doctrine of ripeness ensures a court or administrative agency actually has a case or controversy before it for adjudication. The requirement of ripeness assures that a court or administrative agency does not render advisory opinions on merely hypothetical questions. The Commission in *Thomas C. States v. Pennsylvania Electric Company and United Electric Cooperative, Inc*., *(States)* 1995 Pa. P.U.C. LEXIS 179, 24 (Initial Decision dated Nov. 29, 1995), adopted without modification, 1996 Pa. P.U.C. LEXIS 174 (Order dated Jan. 16, 1996) determined:

The Complainant has just recently completed construction of his new residence. There is no doubt, based upon his testimony and demeanor during the hearings in this case, of his intention to build a garage, as well. 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. Certainly, the ripeness doctrine should not be so stringently construed as to require an individual to risk the expense of building a structure upon a given location with the hope that he or she will ultimately prevail in a legal proceeding to obtain electric service of his/her choice to that site. Clearly, the Complainant here pursued the more prudent course of seeking the Commission's decision before erecting his garage. Accordingly, the rationale for application of the doctrine of ripeness does not exist here. Thus, I will address the merits of his claim.

As explained *supra,* for the purposes of deciding Preliminary Objection # 2, the Complainants’ averments regarding the proposed bi-directional service must be viewed as true, and any doubt must be resolved in favor of the Complainants by refusing to sustain the Preliminary Objection. Furthermore, the circumstances surrounding the two Petitions for Emergency Relief, Docket Nos. Docket No. P-2018-3003368 and P-2018-3004857, filed by the Complainants in the course of this Complaint proceeding remove all questions on the existence of a controversy and the hypothetical nature of the issues raised by the Complainants. After carefully reviewing the history of proceedings in the present Complaint as well as the parties’ allegations, I find that, by allowing the Amended Complaint to proceed to evidentiary hearings, the Commission will not be rendering “an advisory opinion on a hypothetical question, which may never come to pass.” Consequently, Laurel’s Preliminary Objection # 2 is overruled.

**Preliminary Objection # 3 - Complainants’ Have Failed to State a Claim That Laurel’s Proposal to Initiate Bidirectional Service is Inconsistent with its Existing Intrastate Tariff.**

In its Preliminary Objection #3, Laurel seeks to dismiss Count No. 1 of the Amended Complaint. 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. Preliminary Objections, ¶ 45. Laurel argues that, 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. Preliminary Objections, ¶ 45.

Laurel explains that its 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.

Preliminary Objections, ¶ 46, *citing* Laurel Pipe Line Company, L.P. – Tariff Pa. P.U.C. No. 79 (effective June 1, 2008), page 4, Item No. 10(B) (emphasis in Preliminary Objections). According to Laurel, 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. Preliminary Objections, ¶ 47. Laurel avers that it has altered its pumping sequences and schedules without making a tariff filing many times in the past and that its bidirectional proposal constitutes a modification of pumping sequences and schedules. *Id.*

Last, Laurel maintains that its Tariff is consistent with controlling Commission precedent, citing *Harris v. Nat’l. Transit Co.*, 1976 Pa. PUC LEXIS 50, at 4-5 (Order Entered Aug. 27, 1976) (*Harris*). According to Laurel, the Commission’s ruling in *Harris* permits a common carrier public utility providing petroleum products transportation service to change its method of operation without first obtaining Commission approval. Preliminary Objections, ¶¶ 48-49.

In their Response, the Complainant’s argue that the phrase "alter pumping sequences and schedules" is ambiguous, and that the most reasonable interpretation of the phrase is that pumping sequences and schedules may be changed within the context of Laurel's existing east to west certificated intrastate transportation service. Complainants’ Response, ¶ 31. They maintain that Laurel is planning to abandon some east to west intrastate service, not in favor of west to east intrastate service, but rather in favor of new interstate service which in no way is addressed by Laurel's Pennsylvania CPC. *Id.*

Next, the Complainants distinguish *Harris* from the present Complaint. They argue that in *Harris*, the Commission found that "central to this case is the question of whether a utility may change its method of operation where it appears that the original method has become outdated or uneconomical." Complainants’ Response, ¶ 32. In *Harris*, the Commission found evidence that both factors ("outdated or uneconomical ") were satisfied. *Id.* According to the Complainants, there are no similar extreme or extraordinary events forcing Laurel to rely on bidirectional service to continue meeting obligations to its current customers. Complainants’ Response, ¶ 35.

Whether the effect of Laurel’s proposed bi-directional service on its intrastate service is limited to or exceeds its tariffed right to “alter pumping sequences and schedules” is a question of fact. The answer to the question is crucial in determining whether the bi-directional proposal is inconsistent with Laurel’s existing intrastate tariff. Similarly, whether the present case is similar to the circumstances in Harris is a question of fact which cannot be disposed of through preliminary objections. In fact, for the purposes of deciding the Preliminary Objection # 3, the Complainants’ averments regarding the proposed bi-directional service must be viewed as true, and any doubt must be resolved in favor of the Complainants by refusing to sustain the Preliminary Objection. Consequently, Laurel’s Preliminary Objection # 3 is overruled.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed on August 28, 2018 by Laurel Pipe Line Company, L.P. are overruled.

2. That the Amended Complaint filed by Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining & Marketing LLC, and Sheetz, Inc. against Laurel Pipe Line Company, L.P. will be set for a hearing.

Date: October 9, 2018 /s/

Eranda Vero

Administrative Law Judge

**P-2018- -PETITION FOR EMERGENCY RELIEF ORDER  
C-2018-3003365-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**

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