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November 5, 2018

VIA EMAIL AND FIRST CLASS MAIL

Administrative Law Judge Eranda Vero
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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 Judge Vero:

The Complainants received on Wednesday, October 31, from Laurel Pipeline Company, L.P. (“Laurel”) what Laurel characterized as Supplemental Responses to Complainants’ Set I, No. 2 discovery in the above matter. Laurel’s provision of the Supplemental Responses was based upon Your Honor’s Order dated October 24, 2018 in connection with the outstanding Motion to Compel. Unfortunately, Laurel’s production of the Supplemental Responses has not brought to a conclusion the discovery dispute raised by the Complainants’ October 12, 2018 Motion to Compel.

The Complainants have reviewed the Supplemental Responses and believe that a conference call among all parties and Your Honor might be the most efficient way to address what we believe are significant deficiencies in the Supplemental Responses.

Our concerns fall into three main categories: (i) the scope and extent of the redactions in the materials provided, (ii) the pervasive, inappropriate and inconsistent use of “Confidential” and “Highly Confidential” designations in the responses, and (iii), in light of the Supplemental Responses, whether Your Honor should revisit the ruling on Updated Privilege Log item No. 2 and transmittal emails associated with items produced.

First, it appears that Laurel has redacted much of the substantive analysis contained in the submitted documents, ostensibly claiming that such material constitutes privileged mental impressions, conclusions and or/or opinions respecting the value or merit of a claim or defense. The Complainants have no way of verifying the basis for the extensive redactions and therefore continue to be prejudiced by the unilateral determinations made by Laurel. This is particularly of concern, as noted previously, because Laurel’s ability to provide bi-directional service without

adversely impacting the level, type and nature of the existing east to west service the Complainants are currently receiving is directly related to the analyses and evaluation Laurel has conducted with respect to its own pipeline system. Laurel is conflating the purely *factual* issue of whether the nature and extent of such bi-directional service will impair the Complainants' existing service with the *legal* issue regarding whether instituting such service is jurisdictional to the Commission or is itself an abandonment of service requiring Commission approval. By doing so, Laurel is depriving the Complainants of the critical facts necessary to adjudicate the Amended Complaint.

Second, Laurel's use of Confidential and Highly Confidential designations appears to be excessive, which deprives the Complainants' operational personnel from evaluating the technical and logistical underpinnings of Laurel's bi-directional initiatives. The impact of the bi-directional proposal on Complainants' day-to-day operations is a critical issue in this proceeding, yet Laurel's designations of the limited information Laurel has provided to date as Highly Confidential information materially impairs Complainants' access to that information. The Complainants are also unclear about Laurel's inconsistent use of both Highly Confidential and Confidential designations in the Supplemental Responses. For example, Item Nos. 1 and 6 contain both "Confidential" and "Highly Confidential" designations. Because these designations carry different requirements under the outstanding Protective Order regarding who can access these materials, Complainants need immediate clarification of which label is applicable. Complainants reserve their rights to challenge any of the designations affixed to the supplemental responses after resolution of the issues regarding the scope and bases for Laurel's proposed redactions.

Third, Laurel's characterization of its materials is now suspect given its redactions and its confidentiality designations. Moreover, in Laurel's response to Complainants' Motion to Compel, Laurel represented that "the title of each document provided in the Updated Privilege Log identifies each document as "PRIVILEGED AND CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEY CLIENT COMMUNICATION."¹ Laurel's production reveals that two of the documents produced do not contain such designations. Therefore, although Your Honor did not require production of Updated Privilege Log Item No. 2 because of the nature of Laurel's description of the document, Laurel's descriptions are now suspect and the denial of the Motion with respect to Item No. 2 should be re-examined. The Complainants also note that Updated Privilege Log Item No. 2 is described as being sent from non-attorneys to non-attorneys. Therefore, the likelihood that Item No. 2 actually contains mental impressions, conclusions or opinions respecting a legal claim or defense is remote.

Finally, Complainants question Laurel's failure to provide any emails or other correspondence transmitting the documents that were provided in the Supplemental Responses. While we understand that Your Honor's ruling allowed the email transmitting Item No. 3 not to be provided, the updated Privilege Log contains a series of "from/author" and "to/recipients" characterizations, suggesting that the underlying document was transmitted from a particular author to the identified recipients. The transmittal emails may include characterizations of the underlying material that are relevant to the issues in this case. In the previously litigated Laurel

¹ Answer of Laurel Pipe line Company, L.P. to the Motion to Compel Responses to Complainants' Set I, ¶ 35, p. 18.

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Application proceeding at Docket Nos. A-2016-2575829; G-2017-2587567, email communications between employees at Laurel and Buckeye Pipe Line Company, L.P. were significant elements of material relevant to that proceeding. There is no basis for inconsistent treatment in this proceeding for the underlying transmittal documents. Those transmittal documents should have been included in the Supplemental Responses.

The Complainants will work with Your Honor and Laurel to establish a time for a call to discuss these matters, if Your Honor is willing and available to convene such a call.

Very truly yours,



Alan M. Seltzer
*Counsel to Philadelphia Energy Solutions
Refining and Marketing, LLC; and on behalf
of the Complainants*

AMS/tlg
Enclosure

cc: Rosemary Chiavetta, Secretary (via efileing)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Via First Class Mail and Email

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Dated this 5th day of November, 2018.

Alan M. Seltzer

Alan M. Seltzer, Esq.