



**McNees**  
Wallace & Nurick LLC

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PA PUC  
SECRETARY'S BUREAU

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November 13, 2018

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

**VIA HAND DELIVERY**

**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 Second Motion to Compel and For Shortened Response Period on behalf of Giant Eagle, Inc.; Guttman Energy, Inc.; Lucknow-Highspire Terminals, LLC; Monroe Energy, LLC; Philadelphia Energy Solutions Refining and Marketing, LLC; and Sheetz, Inc. ("Second Motion"). **The Complainants respectfully request a five (5) business day response period.**

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



Adeolu A. Bakare

Enclosure

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

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 13 PM 3:43

Administrative Law Judge  
Eranda Vero

PA PUC  
SECRETARY'S BUREAU

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	:	

NOTICE TO PLEAD

TO: David B. MacGregor	Christopher J. Barr
Anthony D. Kanagy	Jessica R. Rogers
Garrett P. Lent	Post & Schell, P.C.
Post & Schell, P.C.	607 14th Street NW, Suite 600
17 N. Second Street, 12th Floor	Washington, DC 20005-2006
Harrisburg, PA 17101-1601	

You are hereby notified that the attached Motion to Compel ("Motion") requests that the response period for this Motion be shortened to five (5) business days from service of this Notice. If you do not file a timely written response to the enclosed Motion, the presiding Administrative Law Judge may rule on this Motion without further input.

File with:

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

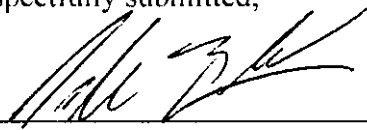
With a copy to the undersigned.

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Respectfully submitted,



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Dated: November 13, 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;	:	Docket No. C-2018-3003365
and Sheetz, Inc.	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
Laurel Pipe Line Company, L.P.	:	
	:	
Respondent	:	

**SECOND MOTION TO COMPEL AND FOR SHORTENED RESPONSE PERIOD**

AND NOW, 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") hereby move for an order determining that, based on Laurel Pipe Line Company, L.P.'s ("Laurel") Supplemental Responses provided in response to Complainants' Set I, No. 2 discovery request, Laurel has failed to fully resolve the discovery dispute raised by the Complainants' October 12, 2018 Motion to Compel ("October 12 Motion") and addressed in Your Honor's Order dated October 24, 2018 in the above-captioned docket ("October 24 Order"). Specifically, Laurel's Supplemental Responses raise numerous concerns regarding the comprehensiveness and classification of the promulgated documents, including: (i) the scope and extent of the redactions in the materials provided, (ii) the claim that Items Nos. 5 and 7 were originally classified as privileged and confidential work product,<sup>1</sup> and (iii) in light of the Supplemental Responses, whether Your Honor should revisit the ruling on Updated Privilege Log item No. 2 and further direct Laurel to produce transmittal emails associated with

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<sup>1</sup> Having now received Items No. 5 and 7, it appears there were no designations applied to them which show the material was considered privileged or confidential when created and circulated.

items produced. To remedy such concerns, the Complainants submit this motion to compel further responses to Complainants' Set I, No. 2 discovery request pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's ("PaPUC" or "Commission") regulations.

## **I. INTRODUCTION**

1. The Complainants<sup>2</sup> are a group of interested parties, including major retailers, as well as refiners and shippers that ship products on the Laurel Pipeline (as defined below), either as the shipper of record or as the entity that injects product into the pipeline.

2. Laurel has been a public utility in Pennsylvania since it received a Certificate of Public Convenience ("CPC") from the Commission in 1957. Since that time, Laurel has owned and operated the Laurel Pipeline. Laurel has only provided single-direction (i.e., east-to-west) intrastate transportation of petroleum products across Pennsylvania, through the Laurel Pipeline, originating in the Philadelphia, Pennsylvania area and extending westward towards Pittsburgh to Midland, Pennsylvania, which is near the Ohio border. Laurel currently is the only intrastate petroleum products pipeline that provides service from Philadelphia west to Pittsburgh, Pennsylvania. Laurel's affiliate, Buckeye Pipe Line, L.P. ("Buckeye"), is the only interstate petroleum products pipeline that provides east to west interstate service to Pittsburgh on the

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<sup>2</sup> The Complainants are largely the same companies that challenged Laurel's application at the Commission seeking authority pursuant to Laurel's intrastate CPC to abandon east-to-west pipeline service for delivery points west of the Eldorado, Pennsylvania delivery point. See, *Application of Laurel Pipe Line Co., L.P. for approval to change direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania*, PaPUC Docket No. A-2016-2575829 (Application Filed Nov. 14, 2016) ("Application"). Commission Administrative Law Judge ("ALJ") Eranda Vero issued a Recommended Decision denying Laurel's Application. *Application of Laurel Pipe Line Co., L.P. for approval to change direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania*, PaPUC Docket No. A-2016-2575829, et al. (Recommended Decision dated March 21, 2018) ("Recommended Decision"). On July 12, 2018, the Commission entered an Order largely affirming the Recommended Decision that rejected Laurel's Application because Laurel failed to meet the legal requirements to abandon east to west service on the segment of its pipeline between Eldorado and Pittsburgh. ("Final Order"). On August 14, 2018, Laurel filed an appeal of the Final Order with the Commonwealth Court. The appeal challenges the Commission's rejection of Laurel's Application and the multiple grounds for that rejection. On August 24, 2018, several of the parties that are Complainants in this proceeding filed a cross-appeal of the Final Order with the Commonwealth Court. The cross-appeal challenges only the Commission's determination that Laurel's existing CPC was not limited to a particular direction for the certificated service on the Laurel Pipeline.

Laurel Pipeline and it does so via an Affiliated Interest Agreement with Laurel that is subject to this Commission's jurisdiction.

3. The Complainants filed a Formal Complaint in this proceeding on July 12, 2018 ("Original Complaint"), to which Laurel filed Preliminary Objections on August 1, 2018. Rather than respond to the Preliminary Objections, the Complainants exercised their right, under Section 5.91(b) of the Commission's regulations, 52 Pa. Code § 5.91(b), to file the Amended Complaint on August 8, 2018.

4. The Amended Complaint addresses Laurel's well-documented decision to commence operating the Eldorado to Midland segment of the Laurel Pipeline bi-directionally without this Commission's review or approval, despite the ALJ's and the Commission's prior rejection of Laurel's legal position that the Commission is preempted from considering impacts on existing intrastate public utility service. The discovery requests that are the subject of this Motion merely request the analysis and modelling that support Laurel's contention, in pleadings before this Commission, in pleadings before the Federal Energy Regulatory Commission ("FERC"), and in affidavits, that bi-directional service will have no impact on east-to-west deliveries on the Laurel Pipeline.

## **II. BACKGROUND**

5. The Complainants initiated discovery promptly in this proceeding by issuing Interrogatories and Requests for Production of Documents (collectively, "Interrogatories") to Laurel on August 17, 2018. The Interrogatories, consisting of two questions, were attached to the October 12 Motion and are incorporated herein. The Interrogatories are intended to ascertain, among other things, the nature and extent of all analyses, investigations, studies, etc. conducted by Laurel in support of its proposed bi-directional service for the segment of the Laurel Pipeline between Coraopolis (near Pittsburgh) and Eldorado (near Altoona).

6. Laurel provided "answers" to the Interrogatories ("Answers") on September 12, 2018. The Answers were also attached to the October 12 Motion and are incorporated herein. Notably, Laurel's response to Question No. 1 indicated that Laurel is still reviewing its files and refers the reader to the response to Question No. 2, which in turn consisted of a Privilege Log purporting to claim that every such document allegedly responsive to the Interrogatories is protected from disclosure to the Complainants by a recognized privilege, i.e., Work Product Privilege (Doctrine) and/or Attorney Client Communication Privilege. In other words, in its September 12, 2018 "production," Laurel did not provide a single document to the Complainants in response to the Interrogatories.

7. Upon receipt of Laurel's September 12, 2018 submission, the Complainants immediately raised concerns and issues about Laurel's alleged answers to the Interrogatories as well as the completeness and lawfulness of the Privilege Log supplied by Laurel.

8. The Complainants timely provided to Laurel their view of the law applicable to privilege logs and a revised privilege log template designed to allow the Complainants the ability to evaluate the privilege claims with respect to the various Laurel documents.

9. On September 21, 2018, Laurel provided to the Complainants Highly Confidential supplemental responses to Set I, Interrogatory No. 1, which marked the first time the Complainants received any actual responses to the Interrogatories that were first issued on August 17, 2018.

10. On October 5, 2018, Laurel provided to the Complainants a "supplemental response" to Set I, Interrogatory No. 2, which contained an updated privilege log listing the following documents claimed to be privileged and not available to the Complainants ("Updated Privilege Log"):

- a. 2/17/2018 Laurel Bi-directional Scheduling Analysis ("Item 1")
- b. 2/17/2018 Laurel Bi-directional Scheduling Analysis mjk comments ("Item 2")
- c. 2/21/2018 Laurel Scheduling Analysis (Email) ("Item 3")
- d. 2/21/2018 Laurel Scheduling Analysis ("Item 4")
- e. 2/21/2018 Volume Scenarios for Analysis ("Item 5")
- f. 3/1/2018 Laurel Scheduling Analysis ("Item 6")
- g. 5/24/2018 Laurel Bidirectional ("Item 7")

The Updated Privilege Log was attached to the October 12 Motion and is incorporated by reference herein.

11. As a result of Laurel's failure to provide any documents in response to Complainants' Set I, Interrogatory No. 2, the Complainants filed a Motion to Compel on October 12, 2018, seeking production of the seven items identified in Laurel's Updated Privilege Log.

12. Following Complainants' October 12 Motion, Your Honor issued the October 24 Order granting the October 12 Motion as to Items 1 and 4-7 and directing Laurel to provide the requested documents by October 31, 2018, subject to redacting privileged information consistent with Section 5.323(a) of the Commission's Regulations.<sup>3</sup>

13. On October 31, 2018, Laurel served Complainants with a further Supplemental Response to Complainants' Set I, No. 2 discovery request, including documents identified as Items 1 and 4-7, which are collectively attached hereto as **Highly Confidential Appendix A**.

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<sup>3</sup> With regard to Item 3, the October 24 Order did not require Laurel to further respond on the assumption that Item No. 3 is a perfunctory email through which Items Nos. 4 and 5 were transmitted with no substantive comments. October 24 Order, at 3-4. Laurel should be required to provide Item No. 3 if the document is other than a perfunctory "cover" email through which Items Nos. 4 and 5 were transmitted. *Id.*



### III. SUMMARY OF ARGUMENT

14. As discussed further below, Laurel's further Supplemental Response fails to comply with Your Honor's October 24 Order with regard to redaction of any privileged information or the Protective Order issued by Your Honor prescribing the standards for Confidential and Highly Confidential designations. In light of Complainants' efforts to engage in meaningful discovery to efficiently advance this proceeding and Laurel's failure to comply with applicable law regarding the withholding of documents based on what appear to be unfounded claims of privilege, the Complainants respectfully request pursuant to Section 5.103 of the Commission's regulations, 52 Pa. Code § 5.103, that Your Honor: (i) compel Laurel to either provide the complete documents or submit un-redacted copies for an *in camera* review; (ii) immediately direct Laurel to provide Items Nos. 5 and 7 in un-redacted form, or in the alternative, submit them for *in camera* review; and (iii) order Laurel to provide Item No. 2 in light of potentially misrepresented information relied upon in the October 24 Order and disclose to Complainants all emails not specifically exempted from disclosure by the October 24 Order. The Complainants also move pursuant to Section 5.103(c) that the ALJ shorten Laurel's response period for this Motion to five business (5) days in consideration of the Complainants' efforts to discuss and resolve this dispute prior to filing both the October 12 Motion and this further Motion to Compel, as well as the fact that it has become necessary to file two motions to compel, and possibly a third, with respect to the Set I interrogatories.<sup>4</sup> To the extent necessary, the Complainants move for Your Honor to conduct an *in camera* review of un-redacted copies of the documents furnished in response to Complainants' Set I, No. 2 discovery request in order to determine the applicability of Laurel's privilege claims and proprietary designations. Finally,

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<sup>4</sup> The Complainants are discussing the appropriateness of Laurel designating certain materials Highly Confidential. If those discussions do not resolve the dispute, a third motion to compel on this set of interrogatories will be necessary.

Complainant's request that Laurel be directed to furnish any further Supplemental Responses within three (3) days of an Order addressing this Motion.

**IV. LAUREL'S REDACTIONS UNDER CLAIM OF ATTORNEY CLIENT AND WORK PRODUCT PRIVILEGES ARE EXCESSIVE AND INCONSISTENT WITH THE OCTOBER 24 ORDER**

15. Whether the attorney-client privilege or the work product doctrine protects information from disclosure is a question of law.<sup>5</sup> Thus, the presiding ALJ has the clear authority to determine whether such privileges/doctrines have been properly invoked through Laurel's redactions of various information in documents provided to Complainants.

16. As noted above, Your Honor's October 24 Order directed Laurel to provide documents responsive to Items Nos. 1 and 4-7 from Laurel's Updated Privilege Log. It was Laurel's position that every word of the responsive documents to Set I No. 2 was privileged, therefore the ALJ correctly recognized that the October 24 Order should allow Laurel to "redact any portion of the documents that include privileged information in accordance with Section 5.323(a) of Commission regulation." The documents provided to Complainants in accordance with the October 24 Order appear to contain far broader redactions of the material than permitted under either the Work Product Doctrine and/or Attorney-Client Communication Privilege.<sup>6</sup> As a result, Laurel must be compelled to furnish un-redacted versions of the documents to Complainants or provide the documents to Your Honor for *in camera* review.

17. Complainants thoroughly reviewed both the Work Product Doctrine and/or Attorney-Client Communication Privilege in the October 12 Motion. As set forth therein, neither privilege offers Laurel unbounded protection. Specifically, the Attorney-Client Communication Privilege "protects only those disclosures—necessary to obtain informed legal

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<sup>5</sup> *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 367 (Pa. 2013).

<sup>6</sup> See October 24 Order, at 3.

advice—which might not have been made absent the privilege."<sup>7</sup> Moreover, "[w]hat would otherwise be routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is 'copied in' on correspondence or memoranda." (internal citations and quotation marks omitted). *Smithkline Beechaum Corp. v. Apotex Corp.*, 232 F.R.D. 467, 478 (E.D. Pa. 2005).

18. The Work Product Doctrine incorporates similar limitations. The Third Circuit has stated that the Work Product Doctrine applies where, "in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation."<sup>8</sup> However, under the federal rules, those materials claimed to be covered by the Work Product Privilege may nonetheless be discovered if they are otherwise discoverable (i.e., relevant or likely to lead to relevant evidence) and the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.<sup>9</sup>

19. The October 24 Order reflects the above-referenced limitations by directing Laurel to limit all redactions to information deemed privileged pursuant to the Commission's regulations at 52 Pa. Code § 5.323(a). In pertinent part, the October 24 Order confirmed the following:

According to the provisions of section 5.323(a) the only exclusion to "discovery of any matter discoverable under § 5.321(b) (relating to scope)" consists of "**the mental impressions** of a party's attorney or his **conclusions, opinions**, memoranda, notes, summaries, legal research or legal theories" as well as "**the mental impressions, conclusions or opinions** [of a representative of a party] respecting

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<sup>7</sup> *Westinghouse Elec. Corp. v. Republic of Phil.*, 951 F.2d. at 1424 (quoting *Fisher v. United States*, 425 U.S. 391, 403 (1976)).

<sup>8</sup> *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)).

<sup>9</sup> Fed. R. Civ. P. 26(b)(3)(i) and (ii).

the value or merit of a claim or defense or respecting strategy, tactics, or preliminary or draft versions of written testimony or exhibits.

October 24 Order, at 2.

20. With regard to Items Nos. 1 and 4-7, the Attorney-Client Communication Privilege is entirely inapplicable to Laurel's document production because it is clear the documents were not prepared by an attorney and therefore cannot contain mental impressions, conclusions, or opinions of Laurel's attorneys. Nor does it appear that these documents represent the mental impressions, conclusions or opinions of a representative of a party respecting the value or merit of a claim or defense or respecting strategy. Rather, these documents pertain to technical analysis of Laurel's proposed bi-directional service that Laurel would presumably undergo regardless of the pending Amended Complaint. For example, in Item No. 4, titled "Laurel Scheduling Analysis," Laurel redacts almost the entirety of three slides appearing to show an analysis of the operation of its bi-directional pipeline under the following three scenarios: (i) west to east primary flow; (ii) east to west primary flow; and (iii) equal west/east flow. While Complainants obviously cannot confirm the content of these or other redacted sections in Items Nos. 1 and 4-7, the totality of Laurel's production indicates the documents contain uniformly technical and general business information related to Laurel's proposed bi-directional operations, as opposed to information that would be disclosed by a party representative only as necessary to obtain informed legal advice. It is inconceivable to suggest that a pipeline operator like Laurel would analyze and troubleshoot operational challenges of initiating a new and novel bi-directional service on a historically uni-directional pipeline solely to solicit legal advice. Laurel continues to fail to recognize the distinction between the *facts* regarding the operational feasibility of the proposed bi-directional service and operations on the Complainants (which is discoverable) with the *legal* issues regarding whether such bi-

directional service is jurisdictional to the Commission or otherwise constitutes an abandonment of service.

21. Laurel's claims of Work Product Privilege for the redacted material should also be dismissed. Through this proceeding, Complainants seek relief from the Commission on the question of whether Laurel's proposed bi-directional service will impair the existing east to west service on its pipeline. Therefore, a complete understanding of the bi-directional scheduling analyses and scenario modeling reflected in Items Nos. 1 and 4-7 is needed for prosecution of the Complaint and cannot be obtained by the Complainants through other means.<sup>10</sup>

22. For the reasons set forth above, Complainants request that the ALJ direct Laurel to provide un-redacted versions of Items Nos. 1 and 4-7 or, in the alternative, conduct an *in camera* review to assess Laurel's privilege claims. Upon issuing an Order directing Laurel to provide additional un-redacted Supplemental Responses, Complainants request that the ALJ compel Laurel to furnish additional documentation within three (3) days of such ruling.

**V. IT DOES NOT APPEAR APPROPRIATE FOR LAUREL TO HAVE CLAIMED ANY PRIVILEGE WITH RESPECT TO ITEMS NOS. 5 AND 7**

23. In Laurel's response to the October 12 Motion, it 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."<sup>11</sup> Through this representation, Laurel conveyed the notion that when each document was created, the author considered it to be subject to privilege. Laurel's document No. 5 is only designated "HIGHLY CONFIDENTIAL PROTECTED MATERIALS" and "PRIVILEGED WORK PRODUCT REDACTED." Neither of these designations appear to

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<sup>10</sup> *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011)

<sup>11</sup> Answer of Laurel Pipe Line Company, L.P. to the Motion to Compel Responses to Complainants' Set I, ¶ 35, p. 18.

be an original title that was placed on the document when it was created. The designation of a document as "HIGHLY CONFIDENTIAL" is a status that arises from the Protective Order in this proceeding governing materials produced in discovery. Such a designation is applied after a document is identified as one that will be provided in discovery in this proceeding. Similarly, the designation "PRIVILEGED WORK PRODUCT REDACTED" would only be applied after the ALJ ordered the document to be produced and allowed redactions to be made. Therefore, when it was created, Item No. 5 had no designation indicating it was considered to be material subject to privilege. Unlike, for example, Item No. 1 which was marked "PRIVILEGED AND CONFIDENTIAL," Item 5 was neither designated "PRIVILEGED AND CONFIDENTIAL" nor "CONFIDENTIAL-ATTORNEY CLIENT COMMUNICATION," as was represented in Laurel's Answer to the October 12 Motion. It appears that Laurel did not consider Item No. 5 to be privileged material until a request for its production arrived in this proceeding.

24. Similarly, Laurel's Item No. 7 is only designated "HIGHLY CONFIDENTIAL PROTECTED MATERIALS" and "PRIVILEGED WORK PRODUCT REDACTED." Item No. 7 was neither designated "PRIVILEGED AND CONFIDENTIAL" nor "CONFIDENTIAL-ATTORNEY CLIENT COMMUNICATION" when it was created, as was represented in Laurel's Answer to the October 12 Motion. Therefore, it also appears that Laurel did not consider Item No. 7 to be privileged material until a request for its production was submitted in this proceeding.

26. If Your Honor does not direct production of fully un-redacted versions of Item Nos. 5 and 7 based on Complainants' argument that the redactions were not justified, a further basis for directing the production of un-redacted versions of Item Nos. 5 and 7 is that these Items were not classified as privileged by Laurel when they were created. Therefore, Item Nos.

5 and 7 were never entitled to be considered privileged material, or subject to redaction. For the reasons set forth above, Complainants request that the ALJ direct Laurel to provide un-redacted versions of Items Nos. 1 and 4-7 or, in the alternative, conduct an *in camera* review to assess Laurel's proprietary designations. Upon issuing an Order directing Laurel to provide additional un-redacted Supplemental Responses, the Complainants request that the ALJ compel Laurel to furnish additional documentation within three (3) days of such ruling.

**VI. LAUREL MUST PRODUCE ALL OTHER INFORMATION UNREASONABLY OMITTED FROM ITS OCTOBER 31 SUPPLEMENTAL RESPONSES**

27. The information now available to Complainants raises numerous questions as to the veracity of certain representations from Laurel and the completeness of Laurel's October 31, 2018 Supplemental Responses. Complainants' review of Items Nos. 1 and 4-7 suggests that: (i) the ALJ denied Complainants' October 12 Motion as to Item No. 2 based on what now appears to be an unreliable declaration from Laurel; and (ii) Laurel omitted responsive emails from its October 31, 2018 Supplemental Response.

28. In the October 24 Order, the presiding ALJ declined to force production of Item No. 2 based on Laurel's description of the document in Laurel's Answer to Complainants' October 12 Motion. As noted above, a review of the documents furnished as Items Nos. 1 and 4-7 confirms that some of Laurel's claims misrepresent the underlying documents. For example, Laurel stated in its Answer that "the title of each document provided in the Updated Privilege Log identifies each document as "Privileged and Confidential" or "Confidential-Attorney Client Communication."<sup>12</sup> However, as noted above, Items Nos. 5 and 7 did not contain titles referencing any privilege *when they were originally created*. The only reference of privilege within these documents occurs where Laurel notes that allegedly privileged

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<sup>12</sup> Answer of Laurel Pipe Line Company, L.P. to the Motion to Compel Responses to Complainants' Set I, ¶ 35, p. 18.

information has been redacted, despite the documents not having been previously labelled or titled to reflect any privileged information as claimed in Laurel's Answer. In light of this discrepancy, the description relied upon in assessing whether Laurel must disclose Item No. 2 should be verified by an *in camera* review of the underlying document.

29. Additionally, Complainants note that Laurel appears to have omitted emails from its October 31 Supplemental Responses not covered by the limited exemption authorized by the October 24 Order. The October 24 Order exempted Laurel from disclosing Item No. 3 on the assumption that Item No. 3 is the email transmitting Items Nos. 4 and 5.<sup>13</sup> However, the Updated Privilege Log includes information indicating that Laurel possesses emails or other correspondence related to Items Nos. 1 and 6-7, which were not exempted from disclosure in the October 24 Order. Specifically, the Updated Privilege log includes "from" and "to" columns showing that Items Nos. 1 and 6-7 were sent from and received by various Laurel personnel. Just as review of the parties' correspondence generated admissible evidence in the Application proceeding at Docket Nos. A-2016-2575829 and G-2017-2587567, the internal correspondence between Laurel and Buckeye personnel may reveal additional information relevant and/or even critical to this proceeding. Therefore, Laurel should have provided this information as part of its October 31, 2018 Supplemental Responses.

30. For the reasons set forth above, Complainants request that the ALJ conduct an *in camera* review of Item No. 2 to confirm the representations relied upon in the October 24 Order and direct Laurel to provide all correspondence referenced in the Updated Privilege Log and not otherwise exempted from disclosure in the October 24 Order, or also conduct an *in camera* review of those materials as well. The Complainants further request that the ALJ compel Laurel

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<sup>13</sup> October 24 Order, at 3-4.

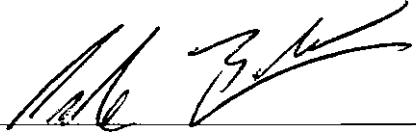


to furnish the additional responsive documentation within three (3) days of issuance of an Order granting this Motion.

WHEREFORE, Complainants hereby request that the Presiding Administrative Law Judge: (i) set a five (5) business day response period for Laurel to this Motion; (ii) compel Laurel to limit redacted materials to privileged information consistent with the October 24 Order; (iii) deny Laurel's entire claim of privilege for Items Nos. 5 and 7; (iv) order Laurel to provide Item No. 2 and disclose all emails not specifically exempted from disclosure by the October 24 Order; (v) conduct, if necessary to grant the aforementioned relief, an *in camera* review of Items Nos. 1-7; (vi) direct Laurel to provide any further Supplemental Responses within three (3) days of an Order addressing this Motion; and (vii) grant Complainants such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 13, 2018



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**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).

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Dated this 13<sup>th</sup> day of November, 2018, in Harrisburg, Pennsylvania.