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December 14, 2018

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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Re: Giant Eagle, Inc., et al. v. Laurel Pipe Line Company, L.P.
Docket No. C-2018-3003365

Dear Secretary Chiavetta:

Enclosed please find Laurel Pipe Line Company's Brief in Opposition to Complainant's Petition for Certification of a Discovery Ruling in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,

Anthony D. Kanagy

ADK/kl
Enclosure

cc: Certificate of Service
Honorable Eranda Vero

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).

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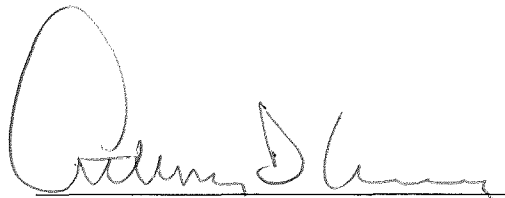
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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.	:	

**LAUREL PIPE LINE COMPANY, L.P.'S BRIEF IN OPPOSITION
TO THE COMPLAINANTS' PETITION
FOR CERTIFICATION OF A DISCOVERY RULING**

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I. INTRODUCTION

Laurel Pipe Line Company, L.P. (“Laurel” or the “Company”), pursuant to 52 Pa. Code § 5.304(d), hereby files this Brief in Opposition to the Petition of 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,” for Certification of a Material Question (“Petition”). The Petition seeks review of the Order Regarding Motion to Compel issued by Administrative Law Judge Eranda Vero (the “ALJ”) on December 4, 2018, wherein the ALJ denied the Complainants’ Second Motion to Compel regarding the production of certain privileged information.

II. PROCEDURAL SUMMARY

The above-captioned Complaint was initiated on July 12, 2018.

After initial rounds of pleadings, a telephonic Prehearing Conference was held on October 16, 2018. As of the date of filing this Answer, no deadlines for testimony and/or hearings have been established in this proceeding.

Complainants filed Set I Interrogatories (“Discovery”) on August 17, 2018.

Laurel provided its initial answers and an associated Privilege Log to the Discovery on September 12, 2018. Laurel provided a supplemental response to Question No. 1 on September 21, 2018, which provided Complainants with additional responsive, non-privileged documents. Laurel also supplemented its response to Question No. 2 on October 5, 2018, by providing an updated privilege log that conformed to the format and substance of a privilege log requested by Complainants’ counsel (“Updated Privilege Log”).

On October 13, 2018, the Complainants filed a Motion to Compel the production of the seven documents identified in the Updated Privilege Log. Laurel submitted a timely Answer to

the First Motion on October 19, 2018.

On October 25, 2018, the ALJ issued an Order granting in part and denying in part the First Motion, and ordered Laurel to produce the documents identified as Item Nos. 1 and 4 through 7 with redactions of “any portion of the documents that include privileged information.” *Giant Eagle, Inc. et al. v. Laurel Pipe Line Company, L.P.*, Docket No. C-2018-3003365, at p. 3 (Order Regarding the Complainants’ Motion to Compel dated Oct. 25, 2018) (“First Order”).

Laurel complied fully with the ALJ’s Order and produced Item Nos. 1 and 4-7 with appropriate redactions of the information claimed as privileged party representative work product on October 31, 2018.

On November 13, 2018, the Complainants filed a Second Motion to Compel the production of un-redacted versions of Item Nos. 1-7. Laurel filed a timely Answer to the Second Motion to Compel on November 19, 2018.

On December 4, 2018, the ALJ issued an Order Regarding the Complainants Motion to Compel (“Order Denying the Second Motion”), and denied the Second Motion to Compel filed by the Complainants. Order Denying the Second Motion, at pp. 2-4. The ALJ concluded that Laurel’s limited redactions to Item Nos. 1 and 4-7 immediately followed “phrases sufficiently indicative that the redacted analysis, comments, or notes contain the mental impressions, conclusions or opinions of the preparer with regard to the operational feasibility of the proposed bi-directional service.” *Id.*, p. 3. In addition, the ALJ confirmed that Laurel’s redactions were not excessive, and further concluded that the Complainants did not provide “reasonable grounds to conclude that the Complainants have substantial need for the redacted information to prepare their case and cannot, without undue hardship, obtain its substantial equivalent by other means.” *Id.* (citing *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011)).

On December 7, 2018, the Complainants filed the instant Petition, requesting that the ALJ certify the following material questions for review by the Commission:

Whether it was appropriate to sustain privilege/doctrine claims under 52 Pa. Code § 5.323(a) of the Commission’s regulations for documents that address factual matters relating to the operational feasibility of a public utility’s bi-directional service on a segment of a petroleum products pipeline and not party representative opinion on a *legal* claim or defense regarding whether the commencement of bi-directional service will impair and thus abandon to some extent that public utility’s existing intrastate petroleum products transportation service.

In a proceeding concerning the operational impacts of Laurel’s bi-directional service on existing east-to-west service, do Complainants have substantial need for the operational analyses of bi-directional service conducted by Laurel’s employees and technical consultants and cannot otherwise obtain the information by other means without undue hardship such that Laurel cannot withhold such analyses under claim of Work Product Privilege/Doctrine?

Petition ¶ 2 (emphasis in original).

III. LEGAL STANDARD

The Pennsylvania Public Utility Code (“Code”) states that:

an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer's certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

66 Pa. C.S. § 333(h). Interlocutory review will not be granted except upon a showing by a petitioner of “extraordinary circumstances” or “compelling reasons” for review exist. *See In re Application of Knights Limousine Service, Inc.*, 59 Pa. PUC 538, 1985 Pa. PUC LEXIS 46, at *4

(Order entered July 11, 1985) (“*Knights*”). Compelling reasons may exist where certification is necessary to prevent substantial prejudice to the parties or to expedite the conduct of the proceeding. *Id.*; *see also* 52 Pa. Code § 5.304(c)(3).

In particular, review of discovery orders are generally disfavored and are only permitted in limited circumstances. *See MCI WorldCom Communications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-00015149, at pp. 14-15 (Order entered Nov. 13, 2001) (“*MCI WorldCom*”). Section 5.304(b) of the Commission’s regulations states that “[a] presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code § 5.304(b) (emphasis added). Important questions of law or policy are not implicated by routine discovery rulings. *See Whemco-Steel Castings, Inc. v. Duquesne Light Company*, Docket No. C-2014-2459527, at pp. 4-5 (Interim Order issued by Administrative Law Judge Jeffrey A. Watson Aug. 27, 2015) (“*Whemco-Steel*”); *see also Pa. Pub. Util. Comm’n v. Dauphin Consolidated Water Supply Co.*, 1987 Pa. PUC LEXIS 215, at *9 (Opinion and order entered Aug. 21, 1987) (“*Dauphin Consolidated*”) (“there is nothing exceptional about disputes over the scope of discovery...”).

IV. ARGUMENT

The Petition should be denied because it fails to satisfy the Commission’s high burden to grant interlocutory review of discovery rulings. The Petition neither identifies an important question of law or policy to be resolved by certification of the question posed nor demonstrates that discovery of the requested information is necessary to prevent substantial prejudice to the parties or expedite the conduct of this proceeding. As explained below, a discovery ruling regarding privilege falls within the routine scope of discovery and does not concern an important question of law or policy. As such, the Complainants have failed to demonstrate that compelling

reasons or extraordinary circumstances that justify interlocutory review exist. For the reasons more fully explained below, the Petition should be denied.

A. THE DISCOVERY RULING DOES NOT INVOLVE AN IMPORTANT QUESTION OF LAW OR POLICY.

i. The Complainants Have Failed To Demonstrate A Discovery Ruling Related To The Scope Of Discovery Involves An Important Question of Law Or Policy.

The Commission's regulations define the scope of discovery as including "...any matter, not privileged, which is relevant to the subject matter involved in the pending action..." 52 Pa. Code § 5.321(c) (emphasis added) (establishing the scope of discovery).¹ Section 5.323(a) further states that privileged party representative work product is outside the scope of discovery. 52 Pa. Code § 5.323(a) ("With respect to the representative of a party other than the party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics."). As such, an order denying disclosure of privileged party representative work product under Section 5.323(a) of the Commission's regulations is a routine discovery order regarding the scope of discovery.²

¹ Pennsylvania appellate courts interpreting Pa. R.C.P. 4003.1, the rule upon which Section 5.321(c) is modeled, have similarly confirmed that privilege determinations are determinations regarding the scope of discovery. *See, e.g., McIlMail v. Archdiocese of Phila.*, 189 A.3d 1110, 1105 (Pa. Super. 2018) ("Turning to the issue of privilege, Pennsylvania Rule of Civil Procedure 4003.1 defines the scope of discovery..." (emphasis added)); *PECO Energy Co. v. Ins. Co. of N. Am.*, 852 A.2d 1230, 1233 (Pa. Super. 2004).

² While a determination as to whether a claimed privilege is recognized by the Commission may raise an important question of law or policy, an ALJ's determination denying the disclosure of party presentative work product privilege is merely a determination regarding the scope of discovery. *See Pa. Pub. Util. Comm'n v. Phila. Elec. Company*, Docket No. C-00021601, 1981 Pa. PUC LEXIS 86 (Order dated Mar. 5, 1981) ("*Philadelphia Electric*") (conducting interlocutory review of the existence of accountant-client privilege). Unlike the respondent in *Philadelphia Electric*, Laurel is not arguing that the Commission should recognize a common law privilege not contemplated by the Commission's regulations, *i.e.* the accountant-client privilege. *See id.*, at *4-5. Moreover, even if *Philadelphia Electric* were applicable, the Commission recognized in this case that the administrative law judge had denied certification of the discovery order rejecting the respondent's claim of accountant-client privilege because "interlocutory review would not expedite the conduct of the proceedings" and the "refusal to certify the question would not subject the parties to substantial prejudice." *Id.*, at *5-6.

Certification of a material question regarding a discovery ruling is only appropriate where the discovery ruling “involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code § 5.304(b). However, important questions of law or policy are not implicated by rulings on the scope of discovery. *Whemco-Steel*, at pp. 4-5. The Commission has previously explained that “there is nothing exceptional about disputes over the scope of discovery in a matter where reasonable persons can disagree.” *Dauphin Consolidated*, at *9. Pennsylvania appellate courts have similarly confirmed that a discovery order limiting the disclosure of privileged information is generally not appealable; only a discovery ruling requiring the disclosure of privileged materials is generally appealable because it cannot be undone. *See, e.g., McIlMail*, 189 A.3d at 1104-05; *Rhodes v. USAA Cas. Ins. Co.*, 21 A.3d 1253, 1258 (Pa. Super. 2011); *Gocial v. Independence Blue Cross*, 827 A.2d 1216, 1220 (Pa. Super. 2003).

In *Dauphin Consolidated*, the Commission denied a petition for interlocutory review that requested review and reversal of a discovery ruling by a presiding officer. *See Dauphin Consolidated*, at p. *1. While the petitioner in *Dauphin Consolidated* sought review of an order granting a motion to compel discovery, the Commission explained that review of this order was not necessary because “[t]here is nothing “exceptional” about disputes over the scope of discovery in a matter...” *Id.*, at *9. Therefore, the Commission denied review of the discovery ruling because it recognized a ruling regarding the scope of discovery was not an “exceptional situation where interlocutory review is appropriate.” *Id.*

Indeed, the Complainants cannot demonstrate that the Order Denying the Second Motion involves an important question of law or policy, because it resolves a dispute over the scope of discovery by correctly concluding that certain information is privileged pursuant to Section

5.323(a). The Order Denying the Second Motion expressly denied Complainants' requested production of privileged information that was redacted consistent with the First Order and Section 5.323(a) of the Commission's regulations. *See* Order Denying the Second Motion, p. 3 (finding the documents contained phrases "sufficiently indicative that the redacted analysis, comments, or notes contain the mental impressions, conclusions or opinions of the preparer with regard to the operational feasibility of the proposed bi-directional service."), pp. 3-4 (concluding Laurel complied with the First Order's direction to redacted information within the scope of 52 Pa. Code § 5.323(a)).

Complainants' conclusory allegations to the contrary are unsupported.³ *See* Petition ¶ 2, n.1. Each of the questions raised by the Complainants in their Petition is related to the scope of discovery in this proceeding, *i.e.* whether certain information sought by the Second Motion is privileged and, therefore, exempt from and outside the scope of discovery in this proceeding. Neither question raises an "important question of law or policy," but instead seeks to reargue the ALJ ruling that the redacted, privileged information is outside the scope of discovery. *See* Petition ¶ 2. Indeed, on its face, the first question plainly requests to revisit the ALJ's ruling regarding the scope of discovery. *See* Petition ¶ 2 ("Whether it was appropriate to sustain privilege/doctrine claims under 52 Pa. Code § 5.323(a)..."). Relatedly, the second question seeks to re-litigate the same issue regarding the discoverability of privileged party representative work product, where a party shows substantial need for the information and cannot otherwise

³ Laurel further notes that the Complainants have referenced documents identified in Laurel's November 8, 2018 privilege log as a part of the Petition and, therefore, Laurel believes that the Complainants may attempt to argue in favor of the disclosure of these documents as a part of their Brief in Support of the Petition. *See* Petition ¶ 8. In addition to mischaracterizing the November 8, 2018 privilege log and the discovery they have received in this proceeding, *see* Section IV.B. *infra*, any attempt by the Complainants to argue that the November 8, 2018 privilege log is relevant or subject to the Petition is procedurally improper. The November 8, 2018 privilege log was not disputed as a part of the Second Motion, any other motion to compel, the Order Denying the Second Motion, or any discovery ruling issued by the ALJ. As such, any argument regarding the November 8, 2018 privilege log raised as part of the Complainants' Petition or associated Brief is not properly before the ALJ.

obtain the information without undue hardship, that was raised in the Second Motion and disposed of in the Order Denying the Second Motion. *See* Second Motion, p. 10 (citing *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011)); *see also* Order Denying the Second Motion, p. 3 ((citing *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011)).

Complainants' Petition improperly seeks a second bite at the apple, and raises the same discovery issues and arguments disposed of in the Order Denying the Second Motion. Therefore, the Petition does not raise important questions of law or policy and must be denied.

ii. The Information Requested By The Complainants Is Not Discoverable Because It Is Privileged Party Representative Work Product Under 52 Pa. Code § 5.323(a).

Section 5.323(a) of the Commission's regulations states:

Subject to this subchapter and consistent with Pa. R.C.P. 4003.3 (relating to scope of discovery trial preparation material generally), a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party's representative, including his attorney, consultant, surety, indemnitor, insurer or agent...With respect to the representative of a party other than the party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

52 Pa. Code § 5.323(a) (emphasis added).⁴ As such, the privileged party representative work product is not discoverable.

⁴ Pennsylvania appellate courts have confirmed that, under Pennsylvania law, the work product doctrine protects the mental impressions, conclusions and opinions of a party's non-attorney representative respecting the value or merit of a claim or defense or respecting strategy or tactics, regardless of whether or not it was prepared in anticipation of litigation. *See Clemens v. NCAA (In re Estate of Paterno)*, 168 A.3d 187, 199-200 (Pa. Super. 2017); *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 416-417 (Pa. Cmwlth. 2014) (holding that application of the work-product privilege is not limited to the litigation context). Indeed, the "broader protections" of the work product doctrine are necessary to enable attorneys to prepare case with the assistance of their agents and other party representatives. *See Am. Int'l Specialty Lines Ins. Co. v. Chubb Custom Ins. Co.*, 2011 Phila. Ct. Com. Pl. LEXIS 265 at *6-9 (Ct. of Com. Pleas of Philadelphia Cnty. Sept. 16, 2011) (Mazer Moss, J.).

The ALJ correctly concluded that the information redacted from Item Nos. 1 and 4-7 constitutes privileged party representative work product. The ALJ explained that the redacted documents contained un-redacted words and phrases that are “sufficiently indicative that the redacted analysis, comments, or notes contain the mental impressions, conclusions or opinions of the preparer with regard to the operational feasibility of the proposed bi-directional service.” Order Denying the Second Motion, p. 3.

Complainants argue that ALJ erred by concluding that the redacted information constitutes privileged party representative work product. Petition ¶¶ 2 (Material Question No. 1), 6. In addition, Complainants represent that “the claimed privileged and redacted documents clearly related to operational facts and not the preparer’s view of the legal claim or defense of abandonment.” Petition ¶ 6. Complainants’ argument should be denied.

Laurel demonstrated that of the redactions applied to Item Nos. 1 and 4-7 was limited to Laurel’s party representative’s “mental impressions, conclusions or opinions respecting the value or merit” of Laurel’s litigation position, *i.e.* “claim or defense,” that the initiation of bidirectional service on the segment of the L718 line between Eldorado and Coraopolis would not impair existing east-to-west intrastate service over that segment. As such, Laurel’s limited redactions of the privileged party representative work product contained in Item Nos. 1 and 4-7 are appropriate and consistent with the Commission’s regulations and Pennsylvania Law.

Moreover, Laurel notes that the “legal claim or defense of abandonment” is not the sole legal claim or defense involved in this proceeding. *See* Petition ¶ 6. The Complainants have also argued that Laurel’s bidirectional proposal would constitute unreasonable service in violation of Section 1501. *See, e.g.*, Amended Complaint, Count No. 1. One of Laurel’s defenses to the Complainants’ claims of unreasonable service under Section 1501 of the Public

Utility Code, is that the provision of bidirectional service will not impair existing east-to-west intrastate service. The redacted information in Item Nos. 1 and 4-7 contains the mental impressions and conclusions of Laurel's party representatives with respect to this claim or defense. As such, the ALJ properly concluded that the redacted party representatives' mental impressions and conclusions respecting this defense are exempt from and outside the scope of discovery.

iii. Complainants Have Failed To Demonstrate They Are Entitled To Discover Privileged Party Representative Work Product.

The ALJ also correctly concluded that the Complainants failed to provide "reasonable grounds to conclude that the Complainants have substantial need for the redacted information to prepare their case and cannot, without undue hardship, obtain its substantial equivalent by other means." Order Denying the Second Motion, p. 3. The Complainants argue the ALJ erred in reaching this conclusion. Petition ¶¶ 2, (Material Question No. 2), 7-8. Specifically, Complainants cite two cases and argue that, even if privileged, "the Complainants have a substantial need for the redacted information to prepare their case and cannot, without undue hardship, obtain its substantial equivalent by other means." Petition ¶ 7 (citing *Sullivan v. Warminster Twp.*, 274 F.R.D 147, 152 (E.D. Pa. 2011) and *United States v. Rockwell Int'l*, 897 F.2d 1255, 1266 (3d Cir. 1990)).⁵ This argument should also be rejected.

Complainants have been provided non-privileged information that is substantially equivalent to the information redacted from Item Nos. 1 and 4-7 during the course of discovery in this proceeding. Laurel has responded to approximately 99% of the Complainants' discovery

⁵ Laurel notes that *Rockwell Int'l* does not address the proposition for which the Complainants cite it, *i.e.* the test in *Sullivan* that would lead privilege work product to nevertheless be subject to discovery where the requesting party has a substantial need for the materials and cannot obtain them without undue hardship. *Sullivan*, 274 F.R.D. at 152 (not referencing or citing *Rockwell Int'l* for this position). To the extent that the Complaints are citing *Sullivan* and/or *Rockwell Int'l* in the Petition as the basis for raising issues in their Brief that are not raised in the Petition, such arguments are outside the scope of the Petition and, therefore, are waived. Laurel reserves its rights to move to strike and/or respond to any issue raised in the Complainants' Brief that was not raised in the Petition.

requests. In responding to these requests, Laurel has also provided responsive, non-privileged documents after conducting an extensive search of thousands of documents to determine which documents are responsive. Laurel has provided the Complainants substantial information regarding its bidirectional proposal, including: the methods for providing bidirectional service Laurel considered and ultimately pursued; specific engineering documents related to the bidirectional proposal; the hydraulics models used by Laurel personnel to evaluate the bidirectional proposal; an overview of the information technology system upgrades implemented by Laurel to accommodate bidirectional service; and many other details and documents.

Having been provided this voluminous and detailed information during the course of discovery, Complainants' suggestion that they have a substantial need for the privileged party represented work product redacted from Item Nos. 1 and 4-7 and cannot obtain equivalent non-privileged information without undue hardship is absurd. Complainants have, in fact, been provided this substantially equivalent non-privileged information. Therefore, the Complainants' suggestion that privileged party representative work product should be disclosed under the test set forth in *Sullivan* must be rejected.

B. THE PETITION FAILS TO DEMONSTRATE THAT DISCOVERY OF THIS INFORMATION IS NECESSARY TO PREVENT SUBSTANTIAL PREJUDICE TO THE PARTIES OR TO EXPEDITE THE CONDUCT OF THIS PROCEEDING.

Other factors that the Commission considers when deciding to grant certification of a material question where "it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding." 52 Pa. Code § 5.304(c)(3); *see also Knights*, at *4.

The Commission has explained:

[T]he correctness or erroneousess of the ALJ's ruling...is not a relevant consideration...The pertinent consideration is whether *interlocutory review is necessary*, in order to prevent substantial prejudice, that is that the error and any prejudice flowing

therefrom, could not be satisfactorily cured during the normal Commission review process.

Re Pennsylvania Gas and Water Company, Docket Nos. I-840377 et al, 58 Pa.P.U.C. 411, 415-16 (Order dated June 22, 1984) (italicized emphasis in original and underlined emphasis added) (internal citations and quotations omitted). In addition, the “avoidance of reversal and remand is not the type of expedition of the proceeding which our rule contemplates.” *Id.*, at 415.⁶

Complainants’ allegations that certification is necessary to “prevent irreparable harm and substantial prejudice” are unsupported or insufficient to justify interlocutory review. *See* Petition ¶ 2, n.1. First, Complainants do not argue that certification would expedite the conduct of this proceeding; no such allegation is made in the Petition. Indeed, the proceeding is in its early stages. Discovery is ongoing and no deadlines for testimony have been established.

Complainants’ further argue that they will be prejudiced because, absent the extraordinary relief requested, “Laurel will continue to stymy the Complainants’ efforts to test and obtain the key facts relating to the operational feasibility of bi-directional service.” Petition ¶ 8. In support of this argument, the Complainants cite to a November 8, 2018 privilege log provided by Laurel and characterize the log as “Laurel has claimed privilege with respect to another forty-one (41) documents on the same basis as those addressed in the December 4 Order.” Petition ¶ 8. The Complainants’ characterization of discovery in this proceeding and the contents of the November 8, 2018 privilege log are patently false and should be rejected.

⁶ To the extent that the Complainants argue in their Brief that interlocutory review of the Order Denying the Second Motion is appropriate because the ALJ did not conduct an *in camera* review of the disputed documents, Laurel submits that this argument was waived because it was not raised in the Petition. In addition, even if it were error for the ALJ to deny the Second Motion with conducting *in camera* review, which it was not, Pennsylvania appellate courts have recently confirmed that the appropriate resolution of this error is a simply a remand of the proceedings. *See Pa. Pub. Util. Comm’n v. Sunrise Energy, LLC*, 177 A.3d 438 (Pa. Cmwlth. 2018). Therefore, interlocutory review on this ground would also be inappropriate. *See Re Pennsylvania Gas and Water Company*, 58 Pa.P.U.C. at 415.

Laurel has responded to ninety (90) of the ninety-one (91) discovery requests issued by the Complainants in this proceeding.⁷ By providing and continuing to provide responses and non-privileged documents in response to the Complainants' robust discovery requests in this proceeding, Laurel has provided and will continue to provide the Complainants sufficient opportunity to review and analyze its bidirectional proposal. In light of Laurel's ongoing efforts, the Complainants' attempts to subject privileged party representative work product to disclosure are inappropriate and unreasonable.

Moreover, the documents in Laurel's November 8, 2018 privilege log are substantially different in kind from those documents subject to the Order Denying Complainants Second Motion to Compel. Of the forty-one (41) documents identified in this privilege log, thirty-eight (34) are either draft pleadings and submissions to the Federal Energy Regulatory Commission ("FERC") or are directly related to the preparation and communication of such materials between Laurel and its internal and/or external counsel, or involve the provision of legal advice related to ongoing proceedings before FERC or the Commission. Such documents plainly constitute attorney-client privileged communications, made for the purpose of securing legal advice related to preparation and submission of legal documents, and contain privileged attorney and party representative work product respecting the value or merit of a claim or defense or respecting strategy and tactics. Four (4) of the remaining documents are emails to or from Laurel's internal counsel, made for the purpose of obtaining legal advice and/or specifically discussing legal strategies with respect to the bidirectional proposal. The Complainants'

⁷ Laurel has not yet provided a response to Set IV, Number 8. Counsel for Laurel and the Complainants conferred regarding this request over the telephone on November 8, 2018, and, pursuant to those discussions, Laurel proposed alternative language for Set IV, Number 8 on November 9, 2018. Laurel's alternative language remains under review by counsel for the Complainants at this time. Subject to the agreement of the parties regarding this proposed language, Laurel intends to respond to Set IV, Number 8.

suggestion that, on the face of the November 8, 2018 privilege log, these documents are not properly designated and withheld as privileged is absurd.⁸

The Complainants have been provided ample opportunity to conduct discovery in this proceeding, and have been provided detailed and voluminous information regarding Laurel's bidirectional proposal. As such, the Complainants have not alleged and cannot credibly argue that the Order Denying the Second Motion will substantially prejudice the Complainants absent interlocutory review. For these reasons and the reasons more fully explained above, the Complainants' have failed to demonstrate that certification of the material questions will expedite the conduct of this proceeding or prevent substantial prejudice to the parties. Therefore, the Petition must be denied.

V. STAY OF THE PROCEEDING

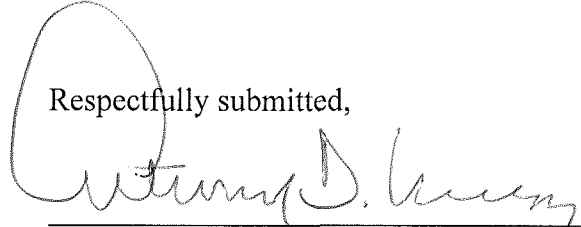
Under Section 5.304(d)(3), parties writing a Responsive Brief to a Petition for Certification must address whether a stay of the proceedings is required to protect the substantial rights of a party. 52 Pa. Code § 5.304(d)(3). Laurel does not believe that a stay of the proceedings is necessary in order to protect the substantial rights of the parties. The Petition involves a discovery ruling, and this proceeding is yet in the early stages of discovery. No litigation schedule establishing deadlines for the filing of testimony has been established. In addition, the Complainants have requested, but not yet agreed to a time for, a technical discovery conference between the parties. Therefore, if the presiding officer grants the Petition, there is sufficient time for the Commission to rule on the certified question.

⁸ With respect to the remaining three (3) documents, specifically Item Nos. 3-5 in the November 8, 2018 privilege log, Laurel notes that on November 21, 2018, its counsel proposed to prepare and serve versions of those documents that are redacted consistent with the ALJ's First Order, as they appeared to be similar in kind to the documents subject to the First Order. Complainants' counsel indicated that they were still reviewing this proposal on November 27, 2018, but have not otherwise responded to the proposal. Laurel also has been, and will continue to be, willing to confer with the Complainants regarding discovery disputes.

VI. CONCLUSION

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that Administrative Law Judge Eranda Vero deny the Petition of Giant Eagle, Inc., Guttman Energy, Inc., Lucknow-Highspire Terminals, LLC, Monroe Energy, LLC, Philadelphia Energy Solutions Refining and Marketing, LLC, and Sheetz, Inc., for Certification of a Material Question.

Respectfully submitted,



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