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February 3, 2026

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Monroe Energy, LLC, Lucknow-Highspire Terminals, LLC, Sheetz, Inc. and PBF Holding Company LLC v. Laurel Pipe Line Company, L.P.; Docket No. C-2025-3053018

Dear Secretary Homsher:

Attached for filing with the Pennsylvania Public Utility Commission are the PUBLIC and PROPRIETARY Exceptions of Complainants on behalf of Monroe Energy, LLC ("Monroe"), Lucknow-Highspire Terminals, LLC ("LHT"), Sheetz, Inc. ("Sheetz"), and PBF Holding Company LLC ("PBF") in the above-referenced proceeding. The PROPRIETARY version of the Exceptions is being provided under seal to the Commission via SharePoint.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

Adeolu A. Bakare
MCNEES WALLACE & NURICK LLC

c: Administrative Law Judge Eranda Vero
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the participants, listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant) and in accordance with the Protective Order in this proceeding.

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Dated this 3rd day of February, 2026, in Harrisburg, Pennsylvania.

PUBLIC VERSION

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Monroe Energy, LLC, Lucknow-Highspire Terminals, LLC, Sheetz, Inc. and PBF Holding Company LLC,	:	
Complainants,	:	Docket No. C-2025-3053018
v.	:	
Laurel Pipe Line Company, L.P.	:	
Respondent.	:	

EXCEPTIONS OF COMPLAINANTS

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Dated: February 3, 2026

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I. INTRODUCTION

In an Initial Decision ("ID"), Administrative Law Judge Eranda Vero (the "ALJ") has preliminarily denied the Complaint of Monroe Energy, LLC ("Monroe"), Lucknow-Highspire Terminals, LLC ("LHT"), Sheetz, Inc. ("Sheetz"), and PBF Holding Company LLC ("PBF") (collectively, the "Complainants") at Docket No. C-2025-3053018 and determined that Laurel Pipe Line Company ("Laurel") possesses full discretion, without Pennsylvania Public Utility Commission ("PUC" or "Commission") oversight, to cease providing uni-directional service on any segment of its pipeline and transition to bi-directional service.

In reviewing Complainants' Exceptions, it is necessary for the Commission to consider the record in this case independently of the ALJ's incorrect view of Complainants' strategy, timing, and procedural decisions in filing and prosecuting the Complaint. Early on in these proceedings, Complainants cautioned that this matter raised complex issues requiring extensive discovery and multiple rounds of testimony to develop an optimal record for the Commission.[1] The ALJ instead determined that the issues in dispute had been largely addressed in a prior 2018 PUC Complaint proceeding at Docket No. C-2018-3003365 ("2018 Complaint") and issued a litigation schedule allowing a single round of pre-served written testimony from each side prior to hearings.[2]

Moreover, the litigation schedule approved by the ALJ allotted just 11 days between receipt of Laurel's Testimony and evidentiary hearings.[3] As the case continued and parties engaged in extensive discovery, Complainants initially filed a Motion to Extend the Procedural Schedule but withdrew the formal motion to engage to attempt to resolve the schedule concerns informally with Laurel. When those discussions proved unproductive, Complainants refiled the Motion seeking to

[1] Complainants' Prehearing Memorandum, Docket No. C-2025-3053018, Filed on May 8, 2025, at 4 (Proposing pre-served Direct, Rebuttal, and Surrebuttal Testimony).
[2] Order Establishing Litigation Schedule, Docket No. C-2025-3053018, Issued on May 21, 2025, at 1.
[3] *Id.*

modify the schedule to allow time for reasonable discovery on Laurel's Rebuttal Testimony.[4] This Motion was largely denied, as the relief granted was limited to postponing hearings by a single day and allowing Complainants to issue discovery on September 2, 2025, which Laurel was compelled to respond to on September 9, just one day before the commencement of the evidentiary hearings. Complainants sought further relief through a Petition for Expedited Interlocutory Review and Answer to Material Question ("Petition for Interlocutory Review") filed on August 26, 2025, which was denied by the ALJ on September 8, 2025. The Commission also denied the Petition for Interlocutory Review in large part on grounds that "the ALJ tentatively scheduled additional hearing days for September 28-30, 2025, and October 1, 2025."[5] Notably, these hearing days were not "tentatively scheduled." Complainants retained the burden of convincing the ALJ that a "worst case scenario" exists, meaning the additional hearing days were never available for Complainants to rely on.[6]

Any representation that Complainants sought to unreasonably delay this proceeding should be flatly rejected. Rather, Complainants sought an opportunity to thoroughly vet the facts adduced by Laurel and present the Commission with a complete record of Laurel's unilateral decision to substantially, and perhaps irreparably, change the landscape of PUC-certificated petroleum products service in the Commonwealth without regulatory oversight or review.

Accordingly, the Complainants offer the following Exceptions to the ID for the Commission's review and consideration.

[4] Joint Motion to Modify the Procedural Schedule and Request for Shortened Answer Period, Docket No. C-2025-3053018, Filed on August 12, 2025, at 5.
[5] Order on Petition for Interlocutory Review, Docket No. C-2025-3053018, Issued on September 11, 2025 at 17.
[6] Tr. at 98:10-12, 20-23, *see also* Tr. at 99:9-10. The Hearing Notices issued for this proceeding were limited to September 10, 11, 12 and 15.

II. EXCEPTIONS

A. Exception No. 1: The Commission should reverse the ALJ's denial of the Complainants' Motion to Strike, because statements in Laurel's Reply Brief relying on unadmitted evidence should be stricken on grounds of hearsay and failure to offer into evidence. ID at 28-31.

On October 31, 2025, the Complainants filed a Motion to Strike ("Motion") requesting removal of references in Laurel Pipeline's Reply Brief to *Introductory Economics: A Modern Approach* (5th ed. 2012) by Jeffrey M. Wooldridge ("Wooldridge"), as this source was not admitted to the record.[7] In the alternative, the Complainants offered an affidavit of their witness, Dr. Morris, for admission to the record to answer Laurel's factual reliance on Wooldridge in its Reply Brief. In the ID, ALJ Vero denied the Motion and rejected the Complainants' affidavit. The ALJ correctly stated that secondary authorities cannot be admitted as substantive evidence to prove the truth of a matter being asserted; however, the ALJ reasoned that the references to the Wooldridge text ("Wooldridge References") are used in the manner of "persuasive authority to help explain specialized concepts relevant to the legal arguments presented."[8] Yet, the Wooldridge References are primarily and explicitly an attempt by Laurel to use Wooldridge and other unnamed "undergraduate textbooks"—all unadmitted evidence—to supplement and bolster the testimony of its witnesses. As demonstrated below, this recommendation of the ALJ errs as a matter of fact, errs as a matter of law, and violates due process concerning a material issue in this case. The Commission should reject the ALJ's recommendation and strike the Wooldridge References from Laurel's Reply Brief, or, alternatively, should admit Dr. Morris' affidavit into the record.

[7] *See* ID at 6.
[8] ID at 30.

#1. The ALJ's recommendation is in error because the Wooldridge References are used primarily to prove the truth of a matter asserted – which is inadmissible hearsay.

The Wooldridge references emerge during part of Laurel's Reply Brief in which Laurel criticizes Dr. Morris' testimony. Rather than rely solely on record evidence, Laurel seeks to bolster its own witness's testimony by introducing new sources.

The ALJ stated in the ID that "secondary authorities, such as… textbooks, cannot be admitted as substantive evidence at trial to prove the truth of matters asserted—they're inadmissible hearsay."[9] This is a correct legal statement, and it is directly applicable to the Wooldridge References. The very first sentence in the Wooldridge References expressly demonstrates Laurel's use of unadmitted, unnamed textbooks to support a "fact" that "Dr. Webb's discussion is consistent with basic statistical practice." This sentence states, in its entirety:

> The **fact** that Dr. Webb's discussion is **consistent with basic statistical practice** is also **broadly supported by reviewing undergraduate textbooks**.[10]

The plain reading of this sentence is that Laurel is offering "undergraduate textbooks" (or perhaps Laurel's "review" of such textbooks) as support for Dr. Webb's testimony—namely, to show it is "consistent with basic statistical practice."[11] This sentence does not "assist Laurel's explanation of a specialized concept."[12] It is a factual assertion that goes directly to the heart of a central dispute between dueling expert witnesses.

The second sentence in the Wooldridge References continues down this same path, again relying on unadmitted evidence for a factual proposition. It states:

[9] ID at 30.
[10] Laurel RB at 24 (emphasis added).
[11] *Id.*
[12] ID at 30.

> In other words, a standard econometrics text **identifies precisely the issue that Dr. Webb discussed in his testimony**, and **to which Dr. Morris provided no effective response**.[13]

This sentence seeks to use the Wooldridge text to "arbitrate" between witnesses. It purports to show that Wooldridge's text "identifies" the same issue as Dr. Webb's testimony. This sentence has no footnote offering any explanatory value. Thus, the reader is left simply with a reference to an *unadmitted, unvetted source* to indicate that Wooldridge's apparent position on the issue would align with Dr. Webb and not Dr. Morris. Once again, this is a statement seeking to "prove the truth of matters asserted" – that is hearsay.

Yet a third time, Laurel's Reply Brief makes a similar factual claim, this time basing the claim on "standard statistical texts." The Reply Brief states:

> Again, **Dr. Webb's conclusion** is **consistent with standard statistical texts**. In other words, consistent with Dr. Webb's testimony, adding irrelevant variables will not generate inaccurate results as long as the appropriate control variables are included. Dr Morris' suggestion that Dr. Webb's analysis contains too many variables is **unsupported by statistical practice** and completely unsupported by any evidence."[14]

Here, Laurel is again making a claim of evidentiary support for Dr. Webb's conclusion and a claim of evidentiary support to refute Dr. Morris' suggestion. These sentences are offered "to prove the truth of matters asserted"—specifically, to try to show that "statistical practice" does not support Dr. Morris' position but is consistent with Dr. Webb's. This would not be a problem if the Reply Brief cited record evidence to show "statistical practice." However, Laurel's Reply Brief attempts to bring in new sources. Laurel has attempted to back-door additional support by bringing general

[13] Laurel RB at 24.
[14] *Id.* at 25.

notions of "reviewing undergraduate textbooks" and "standard statistical texts" and specific, select provisions from Wooldridge's textbook. All are inappropriate.

The pitfalls of accepting evidence based on the "reviewing undergraduate textbooks" should be self-evident. As a matter of due process, Laurel has run afoul of Commission regulations and precedent by attempting to add new evidence into the record at the reply briefing stage of litigation.

#2. Legal sources cited by the ALJ demonstrate that the Wooldridge References should be stricken.

The ID correctly cites the Pennsylvania Supreme Court case, *Aldridge v. Edmunds*, to affirm that "Pennsylvania courts have long held that secondary authorities, such as medical and financial treatises or textbooks, cannot be admitted as substantive evidence at trial to prove the truth of matters asserted—they're inadmissible hearsay."[15] However, the ALJ follows this statement with an exclusion, stating:

> However, this evidentiary prohibition does not exclude these materials from being used in briefs and memoranda to support legal arguments, explain technical concepts, or interpret statutory language. Courts have recognized that parties may utilize various authoritative sources including treatises and reference materials in their legal briefing, and statements in briefs are not themselves evidence that courts must consider."[16]

Unfortunately, the ALJ has arbitrarily and capriciously developed an exclusion to the rule that is not supported by the authorities cited in the ID. *Aldridge* addresses the issue of published materials directly. There, the Supreme Court wrote:

> There is no question that **if published material is authoritative and relied upon by experts in the field**, although it is hearsay, an expert may rely upon it in forming his opinion; indeed, it would be unreasonable to suppose that an expert's opinion would not in some way depend upon the body of works preceding it. Pennsylvania courts have thus permitted, subject to appropriate restraint by the

[15] ID at 30 (citing to *Aldridge v. Edmunds*, 561 Pa. 323 (2000)).
[16] *Id.* at 30.

> trial court, **limited identification of textual materials** (and in some circumstances their contents) **on direct examination** to permit an expert witness to fairly explain the basis for his reasoning…. Since, however, the purpose for which treatises may be referenced on direct examination is generally limited to explaining the reasons underlying the opinion, **the trial court should exercise careful control over their use to prevent them from being made the focus of the examination**. Additionally, the trial court should issue appropriate limiting instructions.[17]

Here, Laurel's use of the Wooldridge text fails all the above tests. First, Laurel has not demonstrated that the published material is relied upon by experts in the field (i.e., authoritative). Second, the limited identification of published materials was not used by the expert witness to "explain the basis for his reasoning"—rather, it was added by the attorneys who authored Laurel's Reply Brief as an attempt to bolster the expert's reasoning after the close of the record. Third, the identification of textual materials did not occur on direct examination—but rather, at the end of the briefing process. Finally, the evidence offered on Reply Brief was *not even admitted into the record at all*.

Although these standards from *Aldridge* provide ample support for striking the Wooldridge References, the *Aldridge* opinion proceeds to address a factual scenario strikingly similar to the Wooldridge References, which was decided in *Nigro v. Remington Arms Co*.[18] The *Nigro* case involved references to published materials that were offered for the exact reason they were offered in Laurel's Reply Brief. The *Aldridge* court described *Nigro* as follows:

> In *Nigro* the references to published materials (authoritative texts related to firearms) exceeded the bounds of such exception -- they were offered for their direct substantive effect, as they were not presented to explain the basis for the expert's own opinion, **but rather, to demonstrate more broadly that the opinion "had some concurrence" among the authorities**.[19]

[17] *Aldridge* at 332-33.
[18] *Nigro v. Remington Arms Co.*, 637 A.2d 983, 986 (Pa. Super. 1993) *appeal dismissed*, 655 A.2d 505 (Pa. 1995).
[19] *Aldridge* at 333-34.

Here, the Laurel Reply Brief attempts to do the same thing—offer published materials to demonstrate alignment between its expert opinion and "standard statistical texts." This approach is contrary to precedent and should be rejected.

In like manner, the other cases cited by the ALJ do not support the ID recommendation regarding the Wooldridge References. *Commonwealth v. Potts*[20] does not support the ALJ's statement that the hearsay prohibition "does not exclude these [secondary] materials from being used in briefs and memoranda to support legal arguments, explain technical concepts, or interpret statutory language."[21] However, the *Potts* opinion merely states, "One is permitted to utilize legal dictionaries, treatises and judicial opinions to **interpret language in statutes**."[22] *Potts* refers to parties citing to legal treatises to explain legal concepts—which fits neatly within the purview of a brief. It does *not* state that new, unadmitted materials can be used to "explain technical concepts."

Similarly, the other cases cited by the ALJ do not sanction use of technical sources not introduced in evidence. If anything, they make clear that assertions on brief are not evidence that the court can consider. For example, in *Lin v. Philadelphia Board of Revision of Taxes*,[23] the Commonwealth Court states that the only statements regarding the alleged violation "appear in the supplemental memorandum of law filed with the trial court, the statement of errors complained of on appeal, and in Mr. Lin's brief before this Court. However, it is axiomatic that statements and in briefs or legal memoranda do not constitute evidence of record upon which decisions can be based."[24]

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[20] 460 A.2d 1127 (Pa. Super. 1983).
[21] ID at 30.
[22] *Potts*, 460 A.2d at 1134 (citing *Rose v. Locke*, 423 U.S. 48, 49-50 (1975)) (emphasis added).
[23] 137 A.3d 637 (Pa. Cmwlth. 2016) cited at ID, n. 36.
[24] *Xun F. Lin v. Bd. of Revision of Taxes of Phila.*, 137 A.3d 637 (Pa. Commw. Ct. 2016) (citing *Erie Indemnity Company v. Coal Operators Casualty Company*, 272 A.2d 465, 467 (Pa. 1971) ("[B]riefs are not part of the record, and the court may not consider facts not established by the record."); *Sanders v. Workers' Compensation Appeal Board (Marriott Corporation)*, 756 A.2d 129, 133 (Pa. Cmwlth. 2000) ("[B]riefs filed in this [C]ourt are not part of the evidentiary record and assertions of fact therein which are not supported in the evidentiary record created below

Critically, all of the cases above describe a context of admitted evidence. The ALJ has cited no authority demonstrating that *unadmitted* evidence may be used for the same purposes denied to admitted evidence. It is inconceivable that if such evidence is not admissible, and has not been admitted, that it could still be offered in a party's Reply Brief. Yet, this is exactly what Laurel did in its Reply Brief. As the Commission recently affirmed, "It is well-established that parties cannot introduce new evidence following the close of the record."[25] Consequently, the Commission should reject this recommendation of the ALJ and grant the Complainants' Motion to Strike. If the Commission declines to strike the Wooldridge References, the Complainants respectfully request that the Commission admit Dr. Morris's affidavit to the record.

B. <u>Exception No. 2</u>: The ALJ erred in concluding that Complainants improperly raised for the first time in a post-hearing brief the argument that Laurel's proposed bi-directional service extension constitutes the initiation of a new service. ID at 31-35.

Laurel claims Complainants raised several arguments for the first time in their Main Brief. ALJ Vero correctly recognized that four of the six statements Laurel introduced for this reason were not a new theory nor a new cause of action when asserted in Complainants' Main Brief.[26] The remaining two statements should be treated the same, rather than stricken or disregarded as ALJ Vero suggests.

Laurel takes particular issue with Complainants' statement that "Buckeye's proposed extension of bi-directional service is a major change from and abandonment of existing east-to-west intrastate service and constitutes the introduction of an entirely new service – cross-state,

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may not form the basis of any action by this [C]ourt.")); *see also Pysher v. Clinton Township Volunteer Fire Co.*, 208 A.3d 1116 (Pa. Cmwlth. 2019) (citing *Sch. Dist. of the City of Monessen v. Farnham & Pfile Co., Inc.*, 878 A.2d 142, 150 n.4 (Pa. Cmwlth. 2005)) (stating "statements in legal briefs and memoranda are not evidence this Court is required to consider.").

[25] *Michael T. Jennings v. West Penn Power Company*, 2025 Pa. PUC LEXIS 307, *23 (Order entered Sept. 11, 2025) (citing *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS, at *8-14 (Order entered Feb. 10, 1994)).

[26] ID at 35-38.

bidirectional, bi-jurisdictional service,[27]" arguing that the Main Brief was the first time Complainants "formulated" their claim this way.[28] In the ID, ALJ Vero found that the aforementioned statement was 1) a new legal claim, 2) a cause of action first introduced in a post-hearing brief, 3) poorly developed in Complainants' Main Brief, 4) unsupported by the record, and 5) a "surprise for Laurel. [29] Each of these findings is incorrect and should be reversed.

ALJ Vero cites Pennsylvania appellate court precedent that makes "clear that post-record ambushes cannot be countenanced."[30] Importantly, each of the "ambushes" in the cited cases were attempts to introduce new evidence in reply briefs or reply exceptions.[31] Here, Complainants only developed a legal argument that was properly presented throughout the proceeding and in the post-hearing briefs.

Complainants have argued from the outset that Laurel's proposed extension of bi-directional service will necessitate reversing the flow of the pipeline along segments L720 and L724.[32] In the Complaint, Complainants characterize Laurel's proposed extension as a "newly imagined bidirectional operation between Eldorado and Sinking Springs."[33] Complainants are hard-pressed to believe that Laurel would be "surprised" by an assertion that its proposal to replace uni-directional service with bi-directional service would constitute abandonment of one service and the initiation of the other. In the ID, ALJ Vero concedes that "violations of a tariff often result in unreasonable service – that a claim of the former often implicates the latter, and vice versa."[34]

[27] Complainants' MB at 18.
[28] ID at 34.
[29] *Id.*
[30] *Id.* at 35.
[31] *Id.* at FN 56 (*see Hess v. Pennsylvania Pub. Util. Comm'n*, 107 A.3d 246 (Pa. Commw. Ct. 2014); 2024 PA. PUC LEXIS 365; 2010 Pa. PUC LEXIS 1615; 1983 Pa. PUC LEXIS 22, 1997 Pa. PUC LEXIS 178).
[32] Complaint at 2, 4, 11-12, 16; Complaint at P 32-34.
[33] Complaint at 12.
[34] ID at 37.

The same principle can and should apply here (*i.e.,* abandonment of one service results in initiation of another service).

Complainants have never asserted that Laurel is intending to abandon east-to-west service on Lines 720 and 724 and replace that previous flow with nothing. The basis of the Complaint has always been that capacity will still flow through those segments, but not in the way it does now. That is, by nature, an entirely new service.

Finally, as discussed in Complainants' Exception No. 5, Complainants are not expanding the request for Laurel to seek a Certificate of Public Convenience ("CPC") for abandonment of its existing uni-directional service from Sinking Spring to Eldorado. Complainants presented the argument regarding the new service proposed by Laurel to clarify the nature of the abandonment and contest Laurel's representation that bi-directional service preserves the existing service. Laurel's proposed bi-directional extension is a new service and cannot be implemented without first abandoning the existing uni-directional east-to-west service on the applicable pipeline segment.

C. <u>Exception No. 3</u>: The ALJ erred in finding that Complainants failed to show evidence of Laurel's intention to abandon the existing east-to-west service between Eldorado and Sinking Spring on the pipeline. ID at 52-53.

In finding that the proposed extension of bi-directional service from Eldorado to Sinking Spring does not constitute an abandonment of its existing uni-directional east-to-west service between the same points, the ALJ inappropriately analogizes the present circumstances to the 2018 Complaint proceeding and presumes Laurel's extension of bi-directional service would preserve the existing east-to-west service based on the settlement resolution of the 2018 Complaint. Contrary to the ALJ's finding, the Commission's approval of the 2019 Joint Petition for Settlement ("2019 Settlement" or "Settlement") does not constitute a finding that bi-directional service can be

implemented without abandoning the prior uni-directional east-to-west service.[35] The Commission should reject the ALJ's finding, rely on its longstanding tenet that settlements are not precedential as to any future proceeding, and consider the question of first impression as to whether the provision of bi-directional pipeline service requires an abandonment of uni-directional pipeline service due to the very different nature of the operational paradigms resulting from expanded bi-directional service over a larger segment of the pipeline.

The ID alleges that "Complainants infer Laurel's intention to abandon the intrastate service from Laurel's historical actions."[36] This is plainly untrue. The Complainants were made aware of Laurel's intention to abandon the existing uni-directional intrastate service on the pipeline when Laurel filed the 2024 Petition for Declaratory Order at Federal Energy Regulatory Commission ("FERC") Docket OR25-6-000 on December 20, 2024 ("2024 PDO").[37] Through the 2024 PDO, Laurel declared its intention to transform the 147 mile segment of its pipeline between the Eldorado and Sinking Spring delivery points from uni-directional east-to-west service to bi-directional service.[38] The record also shows that Laurel undertook various operational system testing and upgrades it deemed necessary to transform the applicable pipeline segment from a uni-directional pipeline to a bi-directional pipeline. The external actions giving rise to Laurel's intention to abandon service are current, not historical.

The ID's findings on Laurel's intentions also draw unreasonable parallels between the 2018 PDO and the 2024 PDO. The ID correctly observes that Laurel proposed to implement bi-directional service on a segment of pipeline between Coraopolis and Eldorado in 2018. Similar to

[35] *Giant Eagle, Inc., et al v. Laurel Pipeline Company, L.P.*, Docket No. C.2018-3003365 (Final Order adopting Recommended Decision Dated August 29, 2019; slip op. at 1-2) ("2019 Settlement Order").
[36] ID at 51.
[37] *Id.* at 52; Complainants' MB at 23.
[38] *See* Complainants' MB at 2, *see also* Complainants' Exhibit C6 (confirming length of applicable pipeline segments).

the current proceedings, Laurel did not file an Application with the Commission, but a group of complainants, including three of the instant Complainants, filed the 2018 Complaint. However, this Complaint was resolved by settlement, through which the complainants waived their right to challenge Laurel's provision of bi-directional service on the pipeline through December 31, 2024.[39] And while the Commission entered the 2019 Settlement Order approving the settlement on August 29, 2019, that approval did not establish a precedent as to this present case. The Commission "vigorously, and without equivocation, reject[s] considering a settlement as precedent, as to any subsequent issue, in any proceeding."[40]

Accordingly, the ID's reasoning that Laurel's 2024 PDO does not evidence an intent to abandon any uni-directional east-to-west service because it seeks only to extend the bi-directional service currently offered pursuant to the 2019 Settlement is circular. The Commission's approval of the 2019 Settlement did not directly reach the question of whether bi-directional service can be provided without first abandoning uni-directional service. There is no doubt that Laurel acted with intent to convert the uni-directional pipeline service from Eldorado to Sinking Spring to bi-directional service. The question before the Commission is not a question of intent, but rather a question of whether the change in service rises to the level of abandonment.

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[39] *See* 2019 Settlement.

[40] *HIKO Energy, LLC v Pa. PUC,* 209 A.3d 246 *(quoting The Bell Tel Co. of PA*., 1988 Pa. PUC LEXIS 572 at *19(Bell)(emphasis in original) (HIKO); *see also Pennsylvania Pub. Util. Comm'n Bureau of Investigation & Enf't*, No. C-2014-2422723, 2016 WL 4699137 (Sept. 1, 2016) ("The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). We noted our holding that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding."); *Pennsylvania Pub. Util. Comm'n Bureau of Investigation & Enf't, No*. C-2014-2431410, 2015 WL 8479094 (Dec. 3, 2015) (Cases achieved by settlement have an "intended lack of precedential value."); *Pennsylvania Pub. Util. Comm'n Off. of Small Bus. Advoc. Off. of Consumer Advoc. Columbia Indus. Intervenors Dr. Richard Collins Ionut R. Ilie the Pennsylvania State Univ.*, No. C-2020-3019702, 2021 WL 1534296 (Apr. 15, 2021) (The Commission did not rely on previous settlement agreements as precedential.).

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D. Exception No. 4: The ALJ erred in finding that the change from Laurel's existing uni-directional east-to-west service from Sinking Spring to bi-directional service between the same delivery points falls short of an intentional complete and permanent elimination or cessation of Laurel's existing uni-directional east-to-west service. ID at 53-59.

In finding that Laurel is not required to apply for a CPC to replace its current uni-directional service with bi-directional service, the ID improperly weighed the record evidence establishing that Laurel's proposed bi-directional service is a materially different service than its current uni-directional east-to-west service.

The ID acknowledges that Complainants presented evidence showing "a decline in the level of intrastate service, 2) a lack of obligation *on the part of Laurel to ensure that the pipeline will flow in either direction in any given cycle,* 3) a new reliance on swaps in lieu of physical transportation of products across the pipeline, 4) an increase in both the complexity of product movements and the difficulty of maintaining a predictable means of moving refined petroleum products due to the implementation of swaps, and 5) an increase in both time and volatility of transit times [parenthetical omitted]."[41] However, the ID found that Laurel successfully rebutted all evidence that replacing uni-directional service with bi-directional service necessitates an abandonment of uni-directional service.

The ID's discussion on flows on the pipeline actually serves to highlight the fundamental differences between bi-directional and uni-directional service. On Laurel's uni-directional pipeline segments, shippers can expect reliable and predictable service moving from east-to-west on every cycle.[42] As stated in the ID, bi-directional service removes this certainty and creates a situation where "the direction of physical flows on the pipeline is ultimately determined by the mass balance of volumes nominated by shippers for a given cycle."[43] While the ID understates Laurel's role as

[41] ID at 56.
[42] Tr. at 93:3-8, 204:17-24.
[43] ID at 56.

the "gatekeeper" responsible for accepting and executing nominations,[44] it confirms that bi-directional operations involves vastly different operations than uni-directional service.

The ID dismisses the significance of these operational differences by relying on Laurel's tariff language granting it managerial discretion to "determine the operating sequences, pumping sequences, and schedules for transportation on its pipeline."[45] However, the Full Reversal Order established the limits of Laurel's managerial discretion. The ID disregards the Full Reversal Order by limiting its applicability to circumstances where the pipeline utility removes delivery points from its tariff.[46] However, while the Full Reversal Order found the removal of delivery points constitutes a material change in service, it did not establish an exclusive set of circumstances meeting the "material change" standard. Just as Laurel was mistaken that it possesses managerial discretion to implement the full reversal, it is mistaken that it possesses managerial discretion to replace uni-directional service on the pipeline from Sinking Spring to Eldorado with bi-directional service.

The ID misconstrues the differences between Laurel's uni-directional service and bi-directional service. In the same manner that a two-way highway operates fundamentally differently from a one-way road, replacing uni-directional pipeline service with bi-directional service materially changes the service provided. This is due to the fact that Laurel cannot simultaneously operate any segment of the pipeline bi-directionally.[47] Rather, the bi-directional operations are achieved through periodic flow reversals and swaps, which complicate Laurel's operations compared to uni-directional service and extend transit times.[48] Complainants

[44] Tr. at 519:8-12.
[45] ID at 56.
[46] *Id.* at 54.
[47] Tr. at 245:1-4.
[48] Complainants' Exhibit SH-1 at 4:10-12 ("A segment of the Laurel Pipeline was converted from solely East-West service to bi- directional service beginning in Fall 2019. Since that time, LHT has experienced a drastic increase in late deliveries and average transit times."), 5:8-11 ("Transit times from Eastern origins that were regularly 7 days to

developed a record establishing that Laurel knew, prior to introducing any bi-directional service, that its selected method of using swaps and successive reversals to operate the pipeline bi-directionally would increase transit times, harming shippers and Pennsylvania gasoline and diesel fuel consumers as well as air travelers.[49] When modeling its bi-directional operations, [BEGIN PROPRIETARY] [redacted] [END PROPRIETARY].[50]

The ID dismisses the relevance of Laurel's "pre-operational concern" over transit times based on (i) the fact that the transit time issues were identified as pre-operational concerns and (ii) an unsubstantiated assertion that Laurel later remediated such concerns.[51] The ID curiously assigns little weight to pre-operational concerns, when that is precisely the time during which Laurel would be evaluating its proposed methods and operational impacts on its shippers. The ID's further conclusion that Laurel "remediated" the pre-operational transit time concerns cites to nothing more than vague and unspecific testimony from Laurel's witness claiming that certain

Altoona and 10 days to Pittsburgh grew to vary from these baseline times to sometimes double that time, with the variability 11 difficult to manage."), 7:16-19 ("More inventory needed for unratable deliveries, multiple cycles delivering together, more variability in delivery times to more terminals, and additional switches among product have all occurred more frequently and less predictably with bi-directional service than occurred prior to bi-directional service."); Complainants' Exhibit JDJ-1 at 3:8-9 ("Sheetz has experienced a high rate of service outages and longer transit times and an increase in the average number of transit days since 2019.), 6:3-12, 7:5-7 ("Sheetz witnessed a 90% increase in the average number of transit days for westward shipments from Linden to Altoona when comparing the most recent three years (2022, 2023, 2024) to the three prior years (2017, 2018, 2019)."), 7:1416 ("The maximum number of transit days, in what is considered a 10-day cycle, to move product westward from Linden to Altoona was 29.5 days in 2024 versus 15 days in 2019, close to a 100% increase in the number of days."); 8:8-10 ("The maximum number of transit days, in what is considered a 10-day cycle, to move product westward from Linden to Altoona was 26.7 days in 2022 versus 11 days in 2019; that is a 142% increase in the number of days."), Complainants' Exhibit KFS-1 at 4:8-10 ("On average, deliveries should arrive every 10 days, give or take a day. Deliveries between Mechanicsburg and Altoona to Coraopolis have been sporadic. Sometimes they 10 are 20 days or more and other times are 5 days or less.").

[49] *See* Complainants' MB at 45.

[50] *Id*.

[51] ID at 113.

equipment was replaced and the [BEGIN PROPRIETARY] [redacted] [END PROPRIETARY] Such bald assertions cannot outweigh the record data evidencing substantially extended transit times during bi-directional operations, especially in light of pre-operational documents confirming that [BEGIN PROPRIETARY] [redacted] [END PROPRIETARY].[53]

The ID additionally understates the impact of Laurel's intent to rely on swaps to replace uni-directional service with bi-directional service. The ID cites to Laurel's tariff provisions authorizing it to set pumping sequences and schedules as well as the tariff language providing that petroleum products are fungible.[54] Neither of these tariff provisions specifically authorize the practice of swaps as employed by Laurel for bi-directional service.[55] While Laurel's tariff authorizes it to set pumping sequences and schedules, the tariff also sets the origin and destination points for the service and the applicable rates.[56] Under standard uni-directional service, shippers are not guaranteed to receive the specific hydrocarbons injected at a particular origin point because all injections into the pipeline are batched according to product specifications.[57] The tariff provisions cited by the ID to justify swaps actually describe fungibility that occurs with standard uni-directional shipments due to batching of products from various shippers. They do not explicitly allow Laurel to charge shippers for physical deliveries between points on the pipeline and then provide a different service using swaps.

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[52] [redacted]

[53] *See* Complainants' MB at 36-40, 45.

[54] ID at 56.

[55] See Exception No. 10, detailing how swaps are not addressed in Laurel's tariff.

[56] ID at 12; *citing* Laurel Exhibit TZ-3 at 2-3.

[57] *See* Laurel Statement No. 4-R at 12:12-21.

The ID attempts to justify Laurel's use of swaps as an industry standard, claiming Laurel has used swaps before implementing bi-directional service.[58] However, Laurel provided no credible evidence showing swaps were used prior to implementation of bi-directional service. Rather, Laurel's witness offered unsupported and generalized testimony claiming swaps are common to uni-directional or bi-directional operations in the industry, but never claimed that Laurel itself relied on swaps for uni-directional operations.[59] When asked to produce records of its use of swaps from 2017 - 2025, Laurel confirmed it maintains no records of swaps.[60] The most compelling record evidence clearly shows that Laurel's reliance on swaps is critical for bi-directional service, unaddressed in its tariff, and distinct from its operation of a uni-directional pipeline.[61]

Complainants acknowledge that differences exist between the present circumstances and those addressed by the Commission in the Full Reversal Order, but maintain that the overall findings from the Full Reversal Order support the Commission directing Laurel to apply for a CPC before abandoning the existing uni-directional service between Sinking Spring and Eldorado. In that case, Laurel proposed to eliminate several delivery points on its tariff, where here, the delivery points served by current uni-directional service from Sinking Spring to Eldorado would be ostensibly preserved. However, Complainants' have demonstrated that replacing the existing service on this segment with bi-directional service results in a complete and permanent cessation of a "type" of jurisdictional service to these delivery points, i.e. uni-directional pipeline service.[62] The ID determined otherwise based on its finding that westbound service would not be completely

[58] ID at 68.
[59] *Id.* at 68 *citing* Laurel Reply Brief at 47, see also Laurel Statement No. 4-R at 33:3-7.
[60] *See* Complainants' Exhibit C4, Complainants' MB at 16, *see also* Complainants' RB at 26.
[61] *See* Highly Confidential Complainants' Exhibit TM-4; *see also* Complainants' RB at 57.
[62] Complainants' MB at 15-21.

eliminated. To support this finding, the ID relies on various cases cited in Laurel's brief for the proposition that "abandonment does not occur due to the diminution, curtailment, or nonuse of service, nor does it occur due to a change in service."[63] The ID's findings overlooked Complainants' detailed examination of each of the cases cited by Laurel as presented in Complainants' Reply Brief.[64]

As discussed in the Reply Brief, the cases relied on by the ID addressed circumstances whether the utility in question curtailed or modified its service offering to implement temporary measures or respond to external circumstances beyond its control.[65] Of particular relevance, the case of *Harris v. Nat'l Transit Co* addressed circumstances where a petroleum products pipeline/trucking company exercised managerial discretion to transition to a full trucking operation in order to preserve service to a single customer (Harris). The Commission determined that the utility acted reasonably in exercising managerial discretion and justified the change in service based on the facts that providing the hybrid pipeline/trucking service had become uneconomical, the applicable utility had provided numerous alternative proposals to the customer and received no response, and the utility was insolvent.[66]

Specifically, the Commission observed that the utility attempted to negotiate with the customer about the change in service.[67] Moreover, the Commission further determined that circumstances were such that the utility would be forced into bankruptcy by continuing to provide the requested service and the customer was not willing to invest capital contributions to preserve the service. These circumstances are not relevant to Laurel. The Commission's prior finding that

[63] ID at 59.
[64] Complainants' RB at 16-23.
[65] *Id.*
[66] *Harris v. Nat'l Transit Co ,* 1976 Pa. PUC LEXIS 50, *4-5, *10-11.
[67] *Id.* at *10-11.

a utility can reasonably implement a service change when necessary to avoid bankruptcy does not support Laurel's proposition that it can unilaterally replace uni-directional service with bi-directional service without showing that abandonment of uni-directional service is appropriate.

The Commission reserves the right and the obligation to review a comprehensive record presenting the public interest basis for Laurel's proposal to abandon uni-directional between Sinking Spring and Eldorado and replace it with bi-directional service. If Laurel believes it has the economic justification to support the proposed abandonment, it must make that case through the appropriate process. Contrary to Laurel's belated request for issuance of the required CPCs in its brief, the Commission cannot make such a determination based on the record in a Complaint proceeding. Accordingly, the Commission should grant this Exception and direct Laurel to file an Application for CPC prior to implementing bi-directional service between its Sinking Spring and Eldorado delivery points.

E. <u>Exception No. 5</u>: The ALJ Erred in Finding that Laurel's proposed bi-directional service is not a "new service" requiring a Certificate of Public Convenience. ID at 61-62.

The ID's finding that Laurel is not required to obtain a CPC to replace uni-directional service with bi-directional service from Eldorado to Sinking Spring misunderstands Complainants' argument. The question of whether Laurel needs a CPC for the proposed bi-directional service does not exist in vacuum. Even if Laurel's CPC provides the authority for bi-directional service, the Commission's Full Reversal Order requires Laurel to first obtain the CPC to abandon its existing uni-directional service before it can offer the bi-directional service.

The ID rejects Complainants' argument that bi-directional service is a new service on grounds that Laurel's CPC does not dictate the direction or capacity of Laurel's service.[68] However,

[68] ID at 62.

the Full Reversal Order acknowledged that Laurel's CPC may provide sufficient authority for the then-proposed fully-reversed uni-directional West-to-East service, but found it unnecessary to reach that decision because Laurel required a CPC to abandon its existing uni-directional east-to-west service between Coraopolis and Eldorado and replace it with materially different bi-directional service between those points.[69] The same follows in this case. As outlined in Complainants' Reply Brief, "the relief sought in this case is that Laurel be required to file an application under Section 1102 and seek an order authorizing abandonment as being in the public interest."[70] In the context of that proceeding, the Commission would address the proposed abandonment of its existing uni-directional east-to-west service from Sinking Spring to Eldorado, including the "the availability and adequacy of the service to be substituted."[71] Complainants' argument that Laurel's proposed bi-directional service between Eldorado and Sinking Spring is a new and materially different service from its existing uni-directional service relates back to Section 1102(a)2 and applies regardless of whether Laurel could have implemented the new service without an abandonment.

As a result, the Commission should grant this Exception and direct Laurel to file an Application seeking approval of a CPC to abandon its existing uni-directional east-to-west service from Sinking Spring to Eldorado prior to implementing bi-directional service on the same pipeline segment.

[69] Full Reversal Order at 45-46.
[70] Complainants' RB at 25.
[71] Complainants' MB at 21.

F. <u>Exception No. 6</u>: The ALJ erred in concluding that the dramatic increase in transit times is a not direct result of the imposition of bi-directional service between Coraopolis and Eldorado and the resulting use of swaps, and that the increase in transit times is not unreasonable service under 66 Pa. C.S. § 1501. ID at 115-123.

The record establishes beyond a doubt that transit times have increased dramatically since the imposition of bi-directional service between Eldorado and Coraopolis, on average more than twice what they were prior to bi-directional service.[72] The ID finds, however, that timely nominations were not deliberately ignored by Laurel, but that does not lead to the conclusion that transit times have not increased. Rather, it increases the probability that there is another cause for increased transit times and strongly suggests that bi-directional service is the sole cause for the increase as Dr. Morris concluded. Although is true that Laurel's tariff does not contain any mandatory limits on transit times, that absence alone does not give Laurel unfettered liberty to publish "expected" transit times and to then exceed those expected times by large margins, on a regular basis.[73] In other words, a tariff violation is not the sole indicator of whether service is unreasonable. Rather, in the absence of a prescribed tariff rule governing the conduct at issue, the Commission reserves judgement to exercise discretion in determining whether the act complained of constitutes unreasonable service.[74] The facts show that bi-directional service, by its very nature, and particularly with Laurel, increases the uncertainty of operations and because of Laurel's lack of communication before the products are tendered, regarding what will be swapped and what will be physically moved and other factors associated with bi-directional service, the shipping environment has become unreasonable. As witness Summers testified, this uncertainty is one of the main reasons Monroe has been looking for alternatives to transporting over the Laurel.[75]

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[72] See ID p.120; Complainants' Rejoinder Exhibits JRM-9, 10 & 11.
[73] Complainants' Exhibit KFS-1, 5:10-6:5.
[74] *West Penn Power Co. v. Pennsylvania Public Utility Com.*, 134 Pa. Commw. 53, 582 (Affirming a PUC Order finding that an electric utility's removal of 74 trees from a right-of-way without notice to the landowner to be unreasonable service notwithstanding the absence of any rule or regulation requiring such notice).
[75] Complainants' Exhibit KFS-1, 3:19-4:2.

In this case, Laurel published expected transit times and then went on to regularly exceed them.[76] The Complainants have not argued that if transit times are not at or less than the "expected" times that is unreasonable service. What they continue to assert is that regularly achieving transit times that are multiples of the "expected" transit times, is not reasonable service. In that sense, even the two cases cited by the ALJ where she stretched to contend that posting transit times, whether guaranteed or not, is not unreasonable service unless accompanied by poor communication, support the Complainants' position. Laurel's poor communication with its customers by posting expected transit times and poor service when those times are exceeded in the extreme on a regular basis, creates unreasonable service in the same way as a taxi company, which also does not have tariffed responses times, telling a patron that it will be fifteen minutes and then takes an hour to pick them up. And contrary to the ID, the record is clear that even the so-called "updates" on T4 were often grossly inaccurate and were demonstrative of a system that has no limit on how long shipments can take and no consequence for taking very long times to deliver product in a just-in-time environment.[77]

Again, contrary to the ALJ's conclusion, in the context of a taxi being later than promised as compared to commercial operations that Laurel knows or should know depend on accurate information, Laurel's sometimes real-time updates do not accomplish the same as they would in a taxi situation where a customer can cancel the cab and call an alternative. [78] In the cross-state pipeline situation, Laurel is the only game in town and once product is tendered, there is no alternative. The question is whether regularly delivering product either at 2 days or 24 days, very

[76] Tr. at 93:5-8.
[77] Complainants' Exhibit KFS-1, 5:10- 6:9.
[78] Tr. at 93:17-20. Of course, when a taxi is late, one customer is harmed; here thousands of Pennsylvania residents would be affected if excessive transit times lead to fuel shortages and increased prices.

late or very early on a regular basis, as this record shows,[79] is a consequence of bi-directional service and whether it constitutes unreasonable service. The answer, as demonstrated in the record, is solidly yes on both counts. The ALJ's rejection of Complainants' assertion that the undisputed increase in transit times since 2019 is based upon her nearly apologetic acceptance of Laurel's "regular communication." Complainants contend that communicating that a shipment will be later than reasonably expected, when it is in the process of being later than reasonably expected, is not terribly helpful when a customer is out of fuel.

The ALJ also improperly found support for her incorrect conclusion on transit times by seeking to undermine the credibility of Complainants' witnesses on grounds that none of the Complainants had filed a formal Complaint with the Commission or FERC regarding extended transit times from Laurel's existing bi-directional service. The ALJ even goes so far as to contend that several of the Complainants were required to file such a complaint as parties to the 2019 Settlement – a suggestion that is, at best, unclear from the Settlement. While the settlement did require notice of any such formal complaint, that requirement only affirmatively applied to issues raised in the two prescribed meetings established by the Settlement for the first six-month period following Laurel's implementation of bi-directional service from Coraopolis to Eldorado and the end of the first year of such operations. The Complaint notification requirement did not extend beyond the first year and certainly not into 2025.[80] The Settlement did not contemplate Buckeye filing a PDO at FERC, which was clearly not one of the issues discussed in the Settlement. Stated differently, even if the Notice of Complaint provision applied past the first year, which it does not; it does not contemplate, nor require prior notice of a complaint regarding a PDO filed with FERC,

[79] Tr. at 131:2-22.
[80] Settlement at ¶35.

which was the impetus of the instant complaint and which clearly constitutes an emergency triggering the emergency exception.

The ID erred in its acceptance of Laurel's argument for why Complainants did not complain earlier if transit times were such a major problem. The answer is clear. There is evidence that transit times were problematic since the beginning of bi-directional service. There is also evidence that Monroe was looking for new markets and was making every effort to take its barrels off the Laurel Pipeline as it could, due in part to the declining reliability of service.[81] The Complainants attributed the decreasing service, including the decrease in transit time stability, as inherent with bi-directional service and there seemed to be no reaction when they did voice dissatisfaction. The Complainants were reacting; they simply were not reacting in the way that Laurel suggests they should have. Again, the ID accepts Laurel's judgement for how the Complainants should have reacted as opposed to the manner in which they did react. When the PDO was filed and the substitution of uni-directional service with bi-directional service on a new segment of the line was unveiled, the Complainants did file a complaint.

The ID continues to unreasonably attack the credibility of Complainants witnesses through unfounded assertions. The unquestioning acceptance of Laurel's argument that Sheetz's participation in a single FERC oil pipeline matter[82] from 2019 to 2024 indicates that Sheetz's transit time issues "could not have been that important" is fallacy and further evidence that the ALJ is willing to accept Laurel's slanted judgement for that of the Complainants' management. In particular, the ALJ's references to Colonial Pipeline litigation that began before the COVID-19 pandemic to reject Sheetz's testimony that the pandemic environment impacted the timing of

[81] Complainants' Exhibit KFS-1, 3:19-4:2.
[82] *See* ID at 114. The noted Colonial matters were not individual matters as the ID suggests, rather, a review of the FERC docket quickly demonstrates that it is a single consolidated matter.

addressing issues with Laurel's operations is illogical.[83] However, the most problematic aspect of the ALJ's findings on this matter remains her overlooking that the proposed further expansion of bi-directional service is a new proposition and the record of complaints against existing bi-directional service is not dispositive of the reasonableness of either the existing or the proposed bi-directional service.

Even more telling, however, is the ID's contention that that the Complainants "failed to prove that existing bi-directional service had anything more than minimal impact over transit times over the L718, or that the impact it did have constitutes unreasonable service." To the contrary, Dr. Morris made it clear that it was bi-directional service, not the alleged declining movements from east to west that was the cause of increasing transit times.[84] Specifically, Dr. Morris acknowledges that decreased volumes would also contribute to increased transit times, but observes that the 26% decline in volume from pre-bi-directional service to the post-November 2019 period of Laurel's existing bi-directional service is not sufficient to account for the severity of the increased transit times observed during the same period.[85]

The only credible evidence in the record concerning swaps was introduced by the Complainants, because Laurel does not maintain records of swaps.[86] Complainants' witnesses provided substantial evidence that the incorporation of swaps, while not always contributing to delayed deliveries, made movements more unpredictable and thus less reliable and less reasonable.[87] There is substantial evidence that swaps have increased transit times over the relatively short Eldorado to Coraopolis segment.[88] Dr. Morris' rejoinder Exhibits 9, 10 and 11 are

[83] ID at 114.
[84] Complainants' Rejoinder Exhibits JRM 10, 11 & 12; *see also* Tr. at 429:7-430:2.
[85] Tr. at 429:7-430:2.
[86] Complainants' Exhibit C-4.
[87] Complainants' MB at 8-9.
[88] Complainants' Exhibit KFS-1, 7:7-8:15.

conclusive in proving that it has indeed been the imposition of bi-directional service that has caused the increase in transit times – not the slight decline in volume moving east to west. Taken as a whole, it is indisputable that expanding the existing bi-directional footprint by more than two times the distance, by converting to bi-directional service a large segment that includes the destinations where much of the east to west shipments currently deliver, and the inclusion of swaps in particular, will increase exponentially the complexity of scheduling. The complexities, as Complainants' witnesses testified, include the ability to connect with pipelines moving north into upstate New York and east into the New York Harbor complex which so far has eluded Buckeye.[89] The ID ignores completely the complexity of bi-directional service and the impact of the mass balance of those flows on barrels moving east though, not to, Pennsylvania, which means that for large stretches of time, the bulk of east-to-west shipments are likely to be swaps. As for the ID's conclusion that the impact of the bi-directional component on Laurel's existing bi-directional service is minimal, it depends on whether one considers transit times increasing from two weeks to a month as significant. The Complainants have proven that it is, and that service will naturally suffer.

For the reasons set forth above, the Commission should grant this Exception and find that Laurel's current bi-directional operations result in unreasonable service between Coraopolis and Eldorado.

G. <u>Exception No. 7</u>: The ALJ erred in concluding that the Complainants failed to prove that the extension of bi-directional service and the increased use of swaps increases complexity to a degree that will result in unreasonable service. ID at 126-133.

The ALJ acknowledges that transit times have significantly increased and become more volatile since 2019.[90] There have been two impactful changes on the Laurel Pipeline since 2019,

[89] Complainants' Exhibit KFS-1, 11:5-15.
[90] ID at 120.

the first was the imposition of bi-directional service and the second the permanent closing of the PES Refinery. Laurel presented evidence, refuted thoroughly by Complainants' witness,[91] that closing of the refinery, and the accompanying reduction in barrels moving west was a major cause of the increase in transit times and other complications on the pipeline. Dr. Morris, to the contrary, described the situation well – that Laurel is an intrastate pipeline that Buckeye treats as though it is an interstate pipeline and as though intrastate shippers are unimportant, while the reality is that the pipeline is first and foremost an intrastate pipeline where interstate service is subject to a contract that is subject to PUC approval.[92]

In the ID, the ALJ adopted Buckeye's worldview. In the ALJ's view, Buckeye and Laurel can do what they please, and it is the Complainants that must adapt their business practices to Buckeye and Laurel's business model. Nonetheless, questions regarding the use of swaps and their impact in adding unpredictability to shipping west on the Laurel pipeline are made more difficult to answer because Laurel maintains no information on swaps, how often they use them and the impact of their use, neither does Laurel inform shippers that a consignment is being moved via swap, leading not only expectations not being met because a shipment is late but also because it arrives in some cases, two weeks before it is expected, which according to Monroe's witness can be just as bad or worse than being late because there may not yet be space to store the shipment.[93]

Layered on top of the use of swaps are the very mechanics of operating a bi-directional pipeline and Laurel's insistence that it is the mass balance, not Laurel, that will decide the direction of flow on the pipeline.[94] It is this abdication from scheduled directionality to the number of barrels tendered deciding the direction of flow that has the largest opportunity to cause chaos. Due to

[91] Complainants' Rejoinder Exhibits 9, 10 and 11.
[92] Tr. at 424:16-425:7.
[93] Complainants' Exhibit KFS-1, 5:7-9.
[94] Tr. at 531:19-24.

Laurel's insistence on the mass balance driving directionality, it is not at all clear how the capacity guarantee will work in the short term, how or when barrels will actually move, if they move, and how swaps are able to be used, if at all, to replace physical barrels. Moving headlong down the road to bi-directional service without providing existing shippers with any reason to believe Laurel has a plan and that the plan will not unreasonably disrupt their business does not provide the Complainants with any confidence that the worst will not happen.

Laurel offers no transparency as to how it will schedule barrels in an expanded bi-directional world. This, to paraphrase the ALJ's argument, lack of communication regarding a critical and necessary aspect of the Complainants' business, when the service itself is already problematic, is at a minimum a contributing factor in the unreasonable nature of Laurel's service. Complainants' witness Miesner made it clear that bi-directional service, by its very nature, is more complex and that complexity creates a greater possibility for mishap.[95] What seems unavoidable from Laurel's witnesses is that extended bi-directional service will depend even more heavily on swaps than Laurel has previously. But Complainants are left in a position of guessing if that is possible because Laurel failed to introduce any evidence of how many swaps it engages and how they work, despite the Complainants requesting that very data.[96] When considering a change that will directly impact major shippers on the Laurel Pipeline, and the sheer lack of operational information – that lack of clarity can only be due to Laurel's lack of transparency, which is indeed unreasonable service under the circumstances. When coupled with the information that Complainants do know about bi-directional pipelines through experience, and what they have presented in this matter, it is clear that service will deteriorate rather than improve.

[95] Complainants' Exhibit TM-1, 13:6-9.
[96] *See* Complainants' Exhibit C4, Complainants' Main Brief at 16, *see also* Complainants' Reply Brief at 26

As noted above, Laurel's provision of limited bi-directional service pursuant to the 2019 Settlement is not dispositive of whether Laurel and proposed extension of bi-directional service along a much longer segment of the pipeline is reasonable. The argument about unreasonable service from replacing more uni-directional service with bi-directional service derives, in large part, from the lack of viable information about the processes that will be adopted in the future.[97] In other words, the lack of transparency which leads directly to the conclusion that Laurel's "trust us" approach is masking conditions and results that will be unacceptable to the Complainants in a transportation service upon which a large portion of their separate businesses rely. The lack of communications in advance of these changes is at the heart of the Complaint. Laurel did not even provide notice to the Complainants when it filed the PDO at FERC. Without information, this Commission cannot determine whether the service Laurel offers will be just and reasonable, which is another reason why the Complainants have insisted that Laurel be required to seek a CPC before offering the service.

With so many questions left unanswered, and the Complainants' businesses in the balance, Laurel must be required to seek Commission approval in the form of a CPC before substituting bi-directional bi-jurisdictional service for the uni-directional, single jurisdiction service provided today on the Sinking Spring to Altoona segment of the line.

H. <u>Exception No. 8</u>: - The ALJ erred by finding that the sudden change of Reid Vapor Pressure ("RVP") requirements in January 2025 did not constitute unreasonable service. ID pp. 146-147.

The record demonstrates that in January 2025, at roughly the same time that Buckeye filed its PDO at FERC, Laurel notified shippers that the RVP schedule and specifications that had been used for many years were suddenly changing. Moreover, as Mr. Summers testified, the changes

[97] Complainants' MB at 55-56.

were announced a few days before the barrels were expected to flow - which left no time for arguing.[98] The record shows these very late in the process changes caused havoc in the industry and imposed costs upon the shippers on the line. The record also shows that Laurel did not give any advance warning of the changes.[99] The ID ignores the facts and concludes that the Complainants did not prove by a preponderance of evidence that the sudden change was unreasonable service. The primary basis for this conclusion appears to be that the change was made at the request of a shipper, a contention for which Laurel provided no documentary evidence and which the record shows is not an accurate conclusion.[100] The ID ignores the undisputed claims of harm and lack of communication and dismisses the Complaint as a one-off, by erroneously suggesting that the Complainants never even voiced complaints about the RVP change to Laurel when the record is clear that they did. [101] Rather than treat Laurel's cavalier behavior as the serious complaint it is, the ID simply brushes it away. The record demonstrates the severe disruption that the sudden change imposed, yet the ID does not afford any weight to the Complainants' argument in its zeal to adopt Laurel's arguments in their entirety. In rejecting what the record makes clear was yet another example of Laurel's uneven at best management of the pipeline, the ID commits error.

I. Exception No. 9: The ALJ erred in arbitrarily misinterpreting the unambiguous capacity guarantee in a manner wholly inconsistent with the 2019 Settlement. ID at 84-85.

The ID strangely ignores the very purpose of the 2019 Settlement which is to permit Laurel to lease west to east capacity to its affiliate, Buckeye, in consideration for what the Settlement expressly calls an "East to West Capacity Guarantee." The ALJ's interpretation reads the

[98] Complainants' Exhibit KFS-1 at 9.
[99] *Id*. at 9:13-10:7.
[100] Tr. at 149:9-13.
[101] *See* Exhibit JDJ-8 pp. 4-5.

Settlement to provide no guarantee whatsoever. That conclusion is clearly erroneous, inconsistent with the Settlement, and has no rational basis in fact or law. Specifically, Section A of the Settlement, entitled Preservation of Existing East to West Capacity provides in pertinent part:

> These Settlement terms will be filed with the Pennsylvania Public Utility Commission ("PaPUC") and the Federal Energy Regulatory Commission ("FERC") to create *specific and legally-enforceable commitments* in each jurisdiction *assuring* that the *available, physical capacity* of east-to-west transportation on Line 718 ("L 718") will be no less than 1,200,000 barrels per cycle (which is 120,000 barrels per day times the ten days in a cycle) under bi-directional service, through the termination of the Full Reversal Moratorium (defined below), outside of force majeure circumstances impacting Laurel's ability to provide such capacity on the Laurel Pipeline, subject to the provisions of Paragraphs 11 and 12 ("East to West Capacity Guarantee").[102]

The defined term "East to West Capacity Guarantee," under which Laurel made a "legally-enforceable and binding commitment … assuring that the available, physical capacity of east-to-west transportation on Laurel's Line 718 ("L-718") will be no less than 1,200,000 barrels per cycle" or 120,000 barrels on each day of a 10 day cycle, is used throughout the Settlement filing and is memorialized in the Settlement Agreement, in Item 90 of Laurel's tariff as required by the settlement, and specifically in ALJ Vero's 2019 Recommended Decision approving the Settlement.[103] In that 2019 Recommended Decision, the ALJ expressly concludes that "[t]he SOL commitments contained in the Settlement provide Complainants and other shippers with *written assurances and guarantees* regarding the methods and processes that will be used to implement bi-directional service."[104] Finally, in 2019, ALJ Vero observed that by requiring Laurel to file

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[102] *Giant Eagle, Inc., et al., v. Laurel Pipe Line Co., L.P.,* Joint Petition for Approval of Settlement, Appendix E (Settlement Agreement), p. 1, filed July 31, 2019 in Docket No. C-2018-3003365 (emphasis added) (footnote omitted).

[103] *Giant Eagle, Inc., et al., v. Laurel Pipe Line Co., L.P.,* Recommended Decision, *see, e.g.,* pp. 6, 12, 14, 24 ("The settling parties submit that the Settlement is in the public interest because it: 1) *guarantees* the Complainants substantial east to west capacity on the Laurel pipeline for a significant period of time"), 26 ("Laurel argues that the 120,000 barrels per day guarantee is reasonable because it is sufficient to accommodate the historical maximum average of volumes over Line 718. … Paragraphs 1 and 2 of the Settlement represent a reasonable compromise of competing positions and guarantee, via Laurel's tariff and the associated Capacity Use Agreement, that bi-directional service will not impair existing east-to-west intrastate service."), 29, and 33. Citations to Non-Proprietary Version.

[104] *Id.* at 29-30.

tariffs with the Commission and FERC containing the necessary provisions to implement the terms of the Settlement, "the Settlement ensures that the terms are clear to the public and enforceable by the appropriate regulatory bodies."[105]

Nevertheless, in the ID in this proceeding, ALJ Vero eviscerates the guarantee that was clear and unambiguous to her in 2019, finding repeatedly that the guarantee is no guarantee and Laurel's 2019 apparently ephemeral assurances are to be enforced at Laurel's option. Enforcement at Laurel's discretion is neither a guarantee nor an assurance. It is not what the 2019 Settlement clearly provided and what ALJ Vero plainly understood in the 2019 Recommended Decision. Nothing in the record of either proceeding supports the ALJ's post hoc re-interpretation of the 2019 Settlement and Laurel's unambiguous ironclad guarantees and assurances in that Settlement and as incorporated in Laurel's tariff.

The ALJ engages in legal gymnastics to redefine the capacity guarantee. For example, the ALJ points to the Capacity Use Agreement, which governs Buckeye's lease of 40,000 barrels per day of Laurel's L718 capacity, suggests that agreement "establishes a capacity availability guarantee but allows for flexibility in shipments below or above that 40,000 bpd limit" for Buckeye's west-to east shipments.[106] The ALJ notes that because Laurel is not required to "reserve" 40,000 bpd for Buckeye's use "it retains the freedom to make any unused Buckeye capacity available to other shippers."[107] While this is correct because the neither the Settlement nor the Capacity Use Agreement provide a concomitant guarantee to Buckeye's west-to-east shipments, the ALJ then avers without basis: "This same interpretation applies to the Agreement's provisions

[105] *Id.* at 34.
[106] ID at 71.
[107] *Id.* (emphasis in original).

concerning the east-to-west transportation over the L718 as well as the additional interstate service contemplated by the Bi-directional Service Extension."[108]

This incredible leap not only defies logic, but it is also not supported in any document, order or agreement in the record of this proceeding or the case leading to the 2019 Settlement. The East to West Capacity Guarantee applies only to east-to-west shippers. The Settlement does not provide or imply that Buckeye's west-to-east movements are in any way guaranteed or that Laurel's flexibility to use that capacity when Buckeye does not do so somehow overrides the East to West Capacity Guarantee. Laurel's obligations to the east-to-west shippers and to Buckeye under the Settlement are completely different and there is no basis in the record or otherwise to limit the Settlement's guarantees and assurances with fatuous and unsupported "reasoning."

Similarly, the ALJ adopts Laurel's twisted view of the Settlement's East to West Capacity Guarantee, erroneously finding that the "capacity guarantees of the [Capacity Use] Agreement make the stated capacity available to Buckeye and east-to-west shippers (40,000 bpd and 120,000 bpd respectively) but does not delegate it exclusively to their respective use."[109] This is a clearly erroneous interpretation of the Settlement and the Capacity Use Agreement. It ignores the fact that the Settlement and Laurel's tariff *guarantee* and *assure* that east-to-west shippers are entitled to 120,000 bpd of capacity every day during a ten-day cycle. That was the very clear purpose and intent of the Settlement. Yet, the ALJ twists the meaning of "available capacity" and reads the East to West Capacity Guarantee out of existence, subverting the Settlement. "Available capacity" must be interpreted in the context of the Settlement, which in a section called "Preservation of Existing West to West Capacity," establishes the unambiguous East to West Capacity Guarantee and expressly references Laurel's assurances to east-to-west shippers. The Settlement provides for a

[108] *Id. (footnotes omitted).*
[109] *Id.* at 78.

guarantee, not for a Capacity First Offer. Contrary to the ALJ's conclusion, guarantees and assurances are not discretionary.[110]

The ALJ's conclusion suggests that if those shippers nominate 119,999 barrels for a given cycle, because nominations were less than 120,000 barrels, then Laurel can simply choose to move product west-to-east for Buckeye makes a mockery of the guarantee. The ALJ contends that the East to West Capacity Guarantee is nothing more than a limited prorationing provision, making available only 120,000 bpd and if nominations are higher, the pipeline will allocate the capacity.[111] The ALJ's conclusion that "the discretion that Complainants seem to fear only pertains to the unused capacity made available to the shippers and any discretionary assignment by Laurel of unused capacity is temporary and cannot outlive the end of the nomination cycle"[112] is both inconsistent with and an overly narrow interpretation of the Settlement.

The further finding that the East to West Capacity Guarantee does not mean that 1,200,000 barrels per cycle of available physical capacity "is reserved for east-to-west shippers irrespective of their actual nominations in the cycle"[113] is at odds with the plain meaning of the Settlement. Again, the ALJ improperly ties the East to West Capacity Guarantee to shipper nominations below the level of the guarantee. This view ignores the clear language of the Settlement "assuring that the available, physical capacity of east-to-west transportation on Line 718 ("L 718") *will be no less than* 1,200,000 barrels per cycle." The guarantee applies whether shippers nominate 1,200,000 barrels for east-to-west movement or half that quantity. That is the only reasonable view of the meaning of the phrase "no less than." The physical capacity must be made available for all cycles, not only when east-to-west nominations exceed the 1,200,000 barrel guarantee level.

[110] *See id.* at 79.
[111] *Id.* at 78-79.
[112] *Id.* at 79.
[113] *Id.* at 84.

Laurel has never applied the East to West Capacity Guarantee in the manner described by the ALJ. There is no record evidence to support the ALJ's theory, and for good reason. A common carrier pipeline always must prorate shippers when nominations exceed capacity. If the East to West Capacity Guarantee is nothing more than a capacity allocation requirement, there would have been no reason for the Settlement or particularly for the east-to-west shippers to agree to a Settlement or provide for guarantee and assurances. Underutilization of the guaranteed physical capacity does not excuse Laurel from its obligation to make capacity available for east to west movements, and it is technologically infeasible for that capacity to be available if the pipeline is operating from west to east at the time a shipper wants to nominate for the opposite direction. Laurel can only physically move products in one direction at a time.[114] It cannot, for example, provide available physical capacity for shipping jet fuel from Chelsea Junction or Booth in the east to Coraopolis in the west when Laurel is flowing unleaded gasoline from Chicago to Sinking Spring.[115]

Finally, the ALJ misunderstands and misinterprets Laurel's obligation to make physical capacity available, rejecting Complainants' position that physical capacity cannot be available when Laurel is moving product from west-to-east because the pipeline can only move products one direction at a time.[116] The suggestion that Complainants are "essentially stating that bi-direction service in and of itself, without consideration of pipeline capacity and nominated volumes, violates the terms of Item 90(A)" and the Settlement, is not supported by the record and misstates Complainants' position in this proceeding. Rather, under the Settlement, Laurel can move 40,000 barrels from west-to-east only when such movement does not preclude physical deliveries

[114] Tr. at 244:25-245:13.
[115] Tr. at 609:10-19; 610:2-7, 15-18.
[116] ID at 84-85.

of products nominated by east-to-west shippers.[117] That is the purpose of the East to West Capacity Guarantee. Moreover, it is the ALJ, not Complainants, that "fails to take under consideration the reality of Laurel's operations in terms of historical volumes, capacity availability, and transportation times."[118] That reality is the very reason the shippers filed the Complaint. Expanding west-to-east movements beyond 40,000 barrels per day will conflict with the East to West Capacity Guarantee, adversely affect Laurel's operations, and deprive east-to-west shippers of the benefit of their bargain in the 2019 Settlement.

Accordingly, it is clear that the ID's overly narrow interpretation of the East to West Capacity Guarantee is clearly erroneous, not supported by record evidence, and must be reversed by the Commission.

J. <u>Exception No. 10</u>: The ALJ erred in finding Laurel's use of swaps does not violate the tariff. ID at 90-92.

The ID rejects Complainants' position that Laurel's use of swaps must be described in its tariff and that no current provision of that tariff expressly permits, and may prohibit, swaps. The ALJ ignores the Black Letter Law that "[a] Utility shall set forth all rules and regulations which apply generally to all classes of service covered by the tariff, and definitions of technical terms and abbreviations used in the tariff, the meanings of which are not common knowledge and cannot be gathered exactly from the context in which used."[119] Compliance with the Code requires a description of swaps and how Laurel utilizes them in providing service to be set forth in the tariff. The conflicting positions of the parties in this proceeding regarding swaps and the ALJ's obvious

[117] Complaint at 12.
[118] ID at 85.
[119] *See* 52 Pa. Code § 53.25, quoted at ID, note 258.

conceptual confusion strongly suggest that there is no common knowledge of the meaning and Laurel's use of swaps. That can be remedied in the tariff.

A tariff serves the vital purpose of providing public notice of the pipeline's terms and conditions of service for its shippers.[120] In approving the 2019 Settlement, ALJ Vero found "the Settlement ensures that the terms are clear to the public and enforceable by the appropriate regulatory bodies."[121] Including key terms and conditions in a tariff serves the exact same end. Silence in a contract or a tariff creates ambiguity and leads to disputes. Laurel's tariff does not address or provide any guidance or parameters on Laurel's use of swaps in providing service, or any rules the pipeline's schedulers must follow when they consider and implement swaps. Even if the Commission finds that Laurel is properly using swaps in its operations, which is unclear based on the record, it must at minimum require Laurel to revise its tariff prospectively to define swaps and set forth the parameters of its use of swaps to make deliveries.

The ALJ arbitrarily declines to even consider such a reasonable prospective requirement to avoid future disputes. Instead, the ID, seeming loath to make even one finding in Complainants' favor, finds that Complainants failed to present evidence to support the claim that swaps violate the tariff and therefore did not meet their burden of proof.[122] Such a finding is clearly erroneous. Complainants argument is a legal, not a factual one and requiring a factual showing to support the plain language of Laurel's tariff is neither necessary nor required. Moreover, since Laurel does not keep records of swaps, the ALJ creates a 'Catch-22' for Complainants. The Commission does not need an expert to tell it the tariff is silent or deficient, or when the service actually provided is not described or circumscribed. The tariff speaks (or in this case it does not speak) for itself.

[120] *Id.*
[121] 2019 Recommended Decision at 34.
[122] ID at 91-92.

Further, the ALJ's tariff interpretations, all finding against Complainants interpretations, strain credulity. For example, Item No. 40 provides "Carrier is under no obligation to deliver the identical Commodities received, but may deliver Commodities of substantially the same specifications."[123] The ALJ misinterprets this provision to find that it describes swaps without using the term.[124] Item No. 15 enables shippers to designate "segregated batches" and Complainants interpret this as foreclosing swaps for such segregated batches. The ALJ finds Complainants provided no evidence.[125] Item No. 65 allows shippers to request diversion or reconsignment of the scheduled destination, but prohibits backhaul movements,[126] which in the context of the tariff provision are accomplished through displacement; in other words, swaps. The ALJ erroneously and without basis rejects Complainants' position by incorrectly finding that there is a "difference in physics between a swap and a backhaul movement."[127] In fact, swaps are displacement deliveries also, as Laurel's own witness, Emery, clearly stated on the record.[128] The ALJ misinterprets all of these tariff provisions in Laurel's favor to conclude that shippers on Laurel do not have a right or expectation that they will tender into Laurel the same barrels that they receive from Laurel and that swaps are not impermissible.[129] Complainants submit that taken together, the silence in the tariff speaks for itself and the ALJ's findings are erroneous and must be reversed on review.

III. CONCLUSION AND REQUESTS FOR RELIEF

Prior to extending bi-directional service from Eldorado to Sinking Spring, Laurel must seek and be granted a CPC. The Code is clear that abandonment of existing single-direction intrastate east-to-west service and the commencement of bi-directional intrastate and interstate service over

[123] *Id.* at 91 *(emphasis omitted).*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] Tr. at 658:18-659:13.
[129] ID at 90-92.

the same segments requires a CPC for the abandonment and for the commencement of a new service that is entirely different from the service provided over the impacted segments. The Coraopolis-to-Eldorado experiment with bi-directional service has proven that not only does the service east-to-west across the pipeline degrade as a consequence of the move to bi-directional service, but the very nature of the service changes. Service where shipments that once took 8-12 days could now take 2 days or 30 days (or more), and product may indeed take months to show up depending on the direction of flow of the pipeline, a direction over which Laurel claims it has no control but over which it has absolute control. There can be no doubt that switching to bi-directional service is an abandonment of single-direction service and a commencement of bi-directional service and that a CPC reflecting the Commission's approval of such a radical change is required.

WHEREFORE, Complainants respectfully request that the Commission reverse the Initial Decision consistent with these Exceptions and grant such other relief as deemed appropriate and consistent with Complainants' Exceptions and briefs.

Respectfully submitted,

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