**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Laurel Pipe Line Company, L.P. :

For approval to change direction of petroleum : A-2016-2575829

products transportation service to delivery :

points west of Eldorado, Pennsylvania :

Affiliated Interest Agreement between : G-2017-2587567

Laurel Pipe Line Company, L.P. and :

Buckeye Pipe Line Company, L.P. :

ORDER REGARDING LAUREL’S MOTION TO COMPEL GIANT EAGLE, INC. TO PROVIDE RESPONSES TO LAUREL SET II DISCOVERY REQUESTS # 3(B), 4, AND 7(B)

On July 14, 2017, Giant Eagle, Inc. (Giant Eagle or the Company) served Giant Eagle Statement No. 1, the Direct Testimony of Richard Tomnay.

On July 21, 2017, Laurel Pipe Line Company, L.P. (Laurel) served Set II Discovery on Giant Eagle.

Giant Eagle objected to Set II Discovery on July 31, 2017. Giant Eagle objected to Set II Request Nos. 2, 3, 4, 5, 6 and 7(b). Through cooperation, the parties were able to resolve the discovery objections, with the exception of Giant Eagle’s objection to Laurel’s Set II Discovery Request Nos. 3(b), 4, and 7(b).

On August 10, 2017, Laurel filed a Motion to Compel responses to Laurel Set II Discovery Request Nos. 3(b), 4, and 7(b) (Motion to Compel or Motion).

On August 15, 2017, Giant Eagle filed its Answer to Laurel’s Motion to Compel.

The Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.321 permit a broad scope of discovery:

(c) Scope. Subject to this subchapter, a party may obtain discovery regarding any mater, not privileged, which is relevant to the subject matter involved in the pending action, **whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party**, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter It is not ground for objection that the information sought will be inadmissible at hearing if the information sought is reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). (Emphasis added).

Laurel – Set II, Request No. 3 provides as follows:

3. *Regarding Mr. Tomnay’s statement at p. 3, lines 20 through 22 that a “majority of the fuel sold in Pittsburgh-area GetGo Stations originates from East Coast sources and is shipped westward via the Laurel Pipeline [sic],” please provide a detailed explanation of how Mr. Tomnay is aware of the origin of the volumes, and provide supporting documents.*

*a) Provide a list of all Pittsburgh-area GetGo stations, including the street address and town/city etc. for each station.*

*b) For each month since January 2012 through July 2017,*

*i) Provide the number of gallons of each type of petroleum product sold by each Pittsburgh-area GetGo station; and*

*ii) Provide the source – either East Coast or Midwest or other for all gallons identified in subpart (i) above.*

In its objection to this discovery request, Giant Eagle argued that the information sought by 3(b)(i) and 3(b)(ii) is not relevant to the issues to be addressed in this proceeding, and is not likely to lead to the discovery of information. Giant Eagle further argued that monthly data relating to each gallon of gasoline sold by Giant Eagle over a 5-year period is well outside the scope of issues in this proceeding. In addition, Giant Eagle argued that both subparts 3(b)(i) and 3(b)(ii) would impose an unreasonable burden and require an unreasonable investigation. Giant Eagle further stated that it does not maintain the information requested in 3(b)(ii).

In its Motion, Laurel responds that the information sought by Request No. 3(b), regarding the volumes, types, and sources of petroleum products sold each month at GetGo stations in the Pittsburgh-area is directly related to Giant Eagle’s claims as stated in Mr. Tomnay’s direct testimony. Laurel argues that specific sections in Mr. Tomnay’s testimony call into question the sources of petroleum products sold at GetGo stations when he testifies that the “majority of fuel sold in Pittsburgh-area GetGo stations originates from East Coast sources and is shipped westward via the Laurel Pipeline [*sic*]...” *See* Giant Eagle Statement No. 1*,* page 3, lines 20-22. Mr. Tomnay also puts at issue the volumes and types of petroleum products sold at GetGo stores when he concludes that both wholesale and retail prices are likely to increase as a result of the reversal. *See* Indicated Parties Stmt. No. 2, page 5, lines 11-14 (“…wholesale prices—i.e., the prices Giant Eagle pays to acquire fuel—are likely to increase if the pipeline is reversed. As Giant Eagle’s costs of goods sold increase, the retail prices it charges its customers will also increase.”). Laurel maintains that it cannot adequately evaluate Giant Eagle’s claims without the data requested in Request No. 3(b). Laurel insists that Mr. Tomnay’s testimony implicates the volumes and types of petroleum products sold at GetGo stores when he testifies that the reversal would increase the risk of supply disruptions, and “would increase the risk of a fuel shortage at GetGo stations.” *Id.*, page 6, lines 1-2.

With regard to Giant Eagle’s argument that Request No. 3(b) would impose an unreasonable burden and require an unreasonable investigation, Laurel responded that the statement is unsupported by the reality of Giant Eagle’s operations. According to Laurel, Giant Eagle is a sophisticated entity that regularly participants in the petroleum products transportation market. The data requested in Request No. 3(b)—volumes and types of petroleum products, and the source(s) of such products, being sold at Giant Eagle’s retail sales outlets—are essential business records for an entity that specializes in sales of petroleum products to consumers. Given the nature of its business operations, Laurel concluded that it is reasonable to expect Giant Eagle maintains, possesses, or otherwise has access to, such information.

In addition, Laurel argued that Giant Eagle has offered no support for its argument that Request No. 3(b)(i) would impose an unreasonable burden and would require an unreasonable investigation, and it has offered no support for its argument that the request imposes an unreasonable burden and would require an unreasonable investigation, other than to state “Giant Eagle does not maintain the information requested” by 3(b)(ii). Laurel points out that Giant Eagle does not allege that it cannot access this information or that accessing this information would impose an unreasonable burden or require an unreasonable investigation. Instead, Laurel believes that Giant Eagle has access to this information through counter-parties to its wholesale purchase contracts and is best positioned to access and produce this essential information. Furthermore, Laurel argued that the requested information is essential to its analysis of Giant Eagle’s claims included in Mr. Tomnay’s testimony. Therefore, according to Laurel, the necessity of this information to Laurel substantially outweighs any burden associated with its production.

In its Answer to the Motion, Giant Eagle reiterated its statements included in its Objections. With respect to Number 3(b)(ii), which seeks the source of every gallon of gasoline sold at GetGo stations since 2012, Giant Eagle explained that when fuel is delivered to GetGo, it does not contain detailed information about the source of the particular gallons being delivered. According to Giant Eagle, it would be extremely burdensome for the Company to trace back the origin point of every single gallon sold since 2012. Giant Eagle argues that re-creating five-plus years of its retail gasoline business would require gathering thousands of hard copy bills of lading from hundreds ofGetGo stations as well as from off-site document storage facilities, and then working with non-parties to re-trace the origin of each gallon to its source. Per Giant Eagle, this would be an unreasonable burden in comparison to the relevance of this information.

Further more, Giant Eagle argues that the source of each particular gallon of gasoline sold at GetGo stations is not relevant to the issues in this proceeding, which concerns whether the proposed reversal is in the public interest. Laurel has argued that the information is necessary to evaluate certain statements in Mr. Tomnay’s testimony; however, the requests are not tailored to the statements actually made. According to Giant Eagle, Request# 3(b)(ii) is not aimed at the statement made by Mr. Tomnay; rather, it seeks granular data that “matches” every gallon of fuel with that gallon’s particular source. Laurel can surely draft a more tailored request if it seeks information it believes is necessary to evaluate Mr. Tomnay’s testimony.

After carefully considering the position of both parties, I agree with Laurel that the information sought in Laurel – Set II, Request No. 3(b) is relevant to the subject matter in these proceedings. However, I also agree with Giant Eagle that it would be unreasonably burdensome for the Company to produce the information sought by Request No. 3(b) in the granular form demanded by the language of the discovery request. Consequently, the language of Laurel – Set II, Request No. 3(b) shall be modified to read as follows:

**b) For each quarter year[[1]](#footnote-1) since January 2012 through July 2017,**

**i) Provide the number of gallons of each type of petroleum product sold by the Pittsburgh-area GetGo stations; and**

**ii) Provide the source – either East Coast or Midwest or other for all gallons identified in subpart (i) above.**

Laurel – Set II, Request No. 4 provides as follows:

4. *Given that Giant Eagle is not a shipper, and relies entirely on contracts with marketers that do ship on pipelines such as Laurel, please provide the following:*

*a) provide a list of all contracts for wholesale supply of refined products, including gasoline and diesel, serving GetGo’s Western Pennsylvania stations between 2012 and July 2017, and in that list include the following information:*

*i) name of the wholesale supplier;*

*ii) volume and identity of products;*

*iii) term of contract; and*

*iv) pricing terms;*

*b) provide a copy of each such wholesale contracts.*

Giant Eagle objected to Number 4 because it seeks information that is not relevant to the issues in this proceeding. According to Giant Eagle, the specific details of its contract with its wholesale supplier are not relevant to assessing the impact of Laurel’s proposed reversal on markets across Pennsylvania and whether such reversal is in the public interest.

Giant Eagle avers that it has already provided information that is responsive to Numbers 4(a)(i) and 4(a)(ii). It also expresses its willingness to produce the contract in a form sufficient to respond to and confirm the information requested in Numbers 4(a)(i), (ii), and (iii). However, it objects to the remaining items sought by Number 4—the pricing terms (4(a)(iv)) and a full copy of the agreement (4(b)) as being overbroad and irrelevant.

Giant Eagle argues that the pricing terms of its wholesale contract are not relevant because this proceeding involves the impact of the proposed reversal on the entire market. According to the Company, an important issue for the PUC is whether the price to obtain fuel from the Laurel Pipe Line will be higher or lower after the proposed reversal. A contract between Giant Eagle and its supplier is not relevant to the question of whether fuel from the Midwest will be more or less expensive than fuel from the East Coast during certain times of the year.

In turn, Laurel argues that the information requested is essential to Laurel’s analysis of Giant Eagle’s claims that it lacks alternatives and will experience harm as a result of the reversal. By way of example, Laurel argues that it is reasonable to expect that Giant Eagle’s contracts will provide direct evidence of the alternatives available to and being used by Giant Eagle, information that is essential to the evaluation of its claims in this proceeding. As such, the necessity of this information to Laurel substantially outweighs any burden associated with its production, and demonstrates the absolute necessity of this information to evaluate Giant Eagle’s claims. Motion at ¶ 25.

After considering the position of both parties, I agree with Laurel that the information sought in Laurel – Set II, Request No. 4(a)(iv) and 4(b) is relevant to the subject matter in these proceedings. Laurel’s Motion to Compel a response to this discovery request is granted.

*Laurel – Set II, Request No. 7 provides as follows:*

*7. Please provide all documents of Giant Eagle during the period 2012 through July 2017:*

*a) analyzing, referencing, discussing or addressing the effects on price or supply of refined petroleum products of a potential reversal of the Laurel system, in whole or in part;*

*b) all documents of Giant Eagle projecting or discussing future wholesale or retail prices for its Western Pennsylvania operations;*

*c) all documents analyzing, referencing, discussing or addressing alternatives that Giant Eagle may have in supplying its Western Pennsylvania retail outlets with refined petroleum products; and*

*d) all documents analyzing, referencing, discussing or addressing the effects of the reversal on competition in Western Pennsylvania.*

Giant Eagle objected to Number 7(b) as vague, overbroad, and unreasonably burdensome. A request seeking all documents over a 5-year period “projecting or discussing future wholesale or retail prices,” regardless of whether those documents have anything to do with Laurel’s proposed reversal, is outside the scope of issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Giant Eagle also objected to the request for production of all documents over a 5-year period “projecting or discussing future wholesale or retail prices,” regardless of whether those documents have anything to do with Laurel’s proposed reversal, arguing that the request would impose an unreasonable burden on Giant Eagle and require an unreasonable investigation.

In its Motion, Laurel rejected Giant Eagle’s objection on relevance and scope grounds. Laurel explained that the information related to Giant Eagle’s projections and discussions of future wholesale or retail prices for its Western Pennsylvania operations is relevant to the evaluation of Giant Eagle’s claims of harm. Laurel argued that the documents requested would provide the basis for an alleged status quo (i.e., the wholesale and retail prices expected by Giant Eagle without the reversal), which is necessary to evaluate Giant Eagle’s claims regarding the effects wholesale and retail prices if the reversal is approved. According to Laurel, the requested information could: (a) demonstrate the status quo, as calculated by Giant Eagle, would in fact be positively affected by the reversal, which is relevant to the accuracy and credibility Giant Eagle’s claims of harm; and (b) demonstrate Giant Eagle’s internal projections and discussions of wholesale and retail prices differ from the projections used in the analysis of either or both of the Indicated Parties’ witnesses Dr. Arthur and Mr. Schaal, which is relevant to the accuracy and credibility of the information relied upon by Mr. Tomnay.

Laurel maintained that it is reasonable to expect that a sophisticated business entity, which regularly participates in the petroleum products transportation market, like Giant Eagle regularly evaluates and assesses wholesale and retail prices for petroleum products in Western Pennsylvania. Therefore, Laurel rejected Giant Eagle’s claim of unreasonable burden or unreasonable investigation in connection with the producing documents containing discussions or projections of wholesale and retail prices for petroleum products in Western Pennsylvania would impose

Laurel also argued that subpart (b) of this discovery request is not vague. It is reasonable to expect that Giant Eagle regularly projects or discusses wholesale and retail prices for petroleum products in Western Pennsylvania. Per Laurel, any documents containing such projections or discussions would be responsive to this request.

In its Answer to the Motion, Giant Eagle reiterated its objections to Request Number 7(b) as vague and neither substantively nor temporally related to the reversal. In order to make its point, Giant Eagle argued as follows,

For example, the request goes back to 2012 and seeks all documents “projecting or discussing future wholesale or retail prices for its Western Pennsylvania operations.” A document from 2012 that “discusses” potential retail prices in 2013 would be a document that “discusses future wholesale retail prices for its Western Pennsylvania operations.” Of course, such a document would unquestionably be irrelevant to the present proceedings, as it would have no conceivable connection to the Application.

Answer ¶ 24.

After considering the position of both parties, I agree with Giant Eagle that the information sought in Laurel – Set II, Request No. 7(b) is not temporarily related to the reversal. I agree that a document from 2012 that “discusses” potential retail prices in 2013 would be a document that is irrelevant to the present proceedings, as it would have no conceivable connection to the Application. Consequently, the language of Laurel – Set II, Request No. 7(b) shall be modified to read as follows:

**(b) all documents of Giant Eagle projecting or discussing future wholesale or retail prices for its Western Pennsylvania operations for the period January 2017 and later.**

THEREFORE,

IT IS ORDERED:

1. That Laurel’s Motion to Compel responses to Laurel – Set II, Request Nos. 3(b), 4(a)(iv) and 4(b) and 7(b) is granted, in part, and denied, in part, in accordance with the discussion, *supra.*

2. That the language of Laurel – Set II, Request Nos. 3(b) and 7(b) shall be modified in accordance with the discussion, *supra.*

3. That Giant Eagle shall serve upon Laurel Pipe Line Company, L.P. full and complete responses to Laurel – Set II, Request Nos. 3(b), 4(a)(iv) and 4(b), and 7(b) by no later than October 2, 2017.

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| --- | --- | --- | --- |
| Date: | September 18, 2017 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

**A-2016-2575829 - APPLICATION OF LAUREL PIPE LINE COMPANY, L.P.**

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1. Depending on the nature of contracts of the various petroleum products, the information requested in Laurel – Set II, Request No. 3(b) may be more easily accessible to Giant Eagle in different (smaller or larger) increments of time. Consequently, an answer to Laurel – Set II, Request No. 3(b) using different increment of time will be deemed responsive to this discovery request as long as the selected time increment is not longer than 12 months. [↑](#footnote-ref-1)