**BEFORE THE**

**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 SHEETZ, INC. TO PROVIDE RESPONSES TO LAUREL SET II DISCOVERY REQUESTS

On July 14, 2017, Sheetz, Inc. (Sheetz or the Company) served Sheetz Statement No. 1, the Direct Testimony of Michael Lorenz.

On July 25, 2017, Laurel served Set II Discovery on Sheetz (Laurel Set II).

On August 4, 2017, Sheetz objected Laurel Set II Request Nos. 1(b), 2(a)(i)-(iii),(b)(i),(c)(i)-(iii), 3(d)-(e), 4(a)(i)-(ii),(iv),(b)(ii)-(v), 7(a)-(b), 8(a)-(c), 11(b), and 13(b).

On August 14, 2017, Laurel filed a Motion to Compel responses to Laurel Set II Discovery Request Nos. 1(b), 2(a)(i)-(iii),(b)(i),(c)(i)-(iii), 3(d)-(e), 4(a)(i)-(ii),(iv),(b)(ii)-(v), 7(a)-(b), 8(a)-(c), 11(b), and 13(b). (Motion to Compel or Motion).

On August 21, 2017, Sheetz 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. 1 provides as follows:**

1. *Regarding Mr. Lorenz’s testimony at p. 1, lines 7 through 22, please answer the following questions:*

*(a) Please state how long the witness has held the current position described in this testimony, and state for his prior positions at Sheetz, Inc. (“Sheetz”) the title of each prior position and the approximate dates between which he held such earlier position.*

*(b) Please list Mr. Lorenz’s “midstream and downstream” positions at Mobil Oil Corp, including the title of each, the approximate dates between which he held such each position, and the geographical scope of the responsibilities associated with each position at Mobil Oil Corp.area from the East Coast PBF refineries.*

Sheetz objected to Request No. 1(b) on the grounds that the information sought is irrelevant to the issues and subject matter of this proceeding, and is not reasonably calculated to lead to the discovery of admissible evidence. Sheetz argued that Mr. Lorenz’s job duties at Mobil Oil Corp. are irrelevant in this proceeding.

In its Motion, Laurel argued that Request No. 1(b) seeks information regarding the prior professional experience of the Sheetz witness. Laurel argues that the testimony of Sheetz’s witness is, in part, founded on his knowledge of the Pittsburgh-area and Altoona-area petroleum products markets, and that this knowledge is based on the witness’s employment history and prior experiences in the industry, whether or not such employment and experiences were with Sheetz. According to Laurel, Sheetz’s objection to providing information regarding its witness(es) background and experience is unreasonable. Laurel argues that it is entitled to inquire about this information in order to test the witness’s knowledge and credibility, which is necessary to evaluate his claims and opinions.

After considering the parties’ arguments, I find that Mr. Lorenz’s experience at another retailer is certainly relevant to his testimony in this proceeding, which stems from his experience in the industry and not merely his work at Sheetz. Such information is clearly discoverable and relevant to Sheetz’s claims in its testimony. Therefore, Laurel’s Motion to Compel a response to Request No. 1(b) is granted.

**Laurel – Set II, Request No. 2 provides as follows:**

*2. Regarding Mr. Lorentz’s testimony at p. 2, lines 8 through 13, regarding the nature and scope of Sheetz’s business in Pennsylvania, please provide answers to the following questions:*

*(a) Please provide a list showing the locations of each of the retail service stations that Sheetz supplies with gasoline and/or diesel, showing the following information for each:*

*(i) address, street, town/local governmental unit and ZIP code;*

*(ii) volume of products delivered to such location for the period 2012 through July 2017, broken down by the following categories: gasoline (specifying whether winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), and diesel; and*

*(iii) the terminal(s) (i.e., the refined products terminal from which tanker trucks transport gasoline or diesel to the service station), for the period 2012 through July 2017 from which Sheetz or others supply each service station specifying the street address, town/local governmental unit and ZIP code for each such terminal.*

*(b) Please provide Sheetz’s estimate or assessment, whether formal or informally derived, regarding its market share in both the Pittsburgh market (as Sheetz defines such market) and for the central Pennsylvania market, for the sale of gasoline and/or diesel; and*

*(i) Please provide all Documents analyzing, referencing, discussing or addressing Sheetz’s market share in Pennsylvania or any market within Pennsylvania, whether such market has been defined by Sheetz or by another entity.*

*(c) Please provide a list showing the locations of each of the retail service stations located in either West Virginia or eastern Ohio that Sheetz has supplied with gasoline and/or diesel from refined products terminals located in Pennsylvania, showing the following information for each:*

*(i) address, street, town/local governmental unit and ZIP code;*

*(ii) volume of products delivered to such location for the period 2012 through July 2017, broken down by the following categories: gasoline (specifying whether winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), and diesel, further broken down by:*

*a. volumes supplied from terminals located in Pennsylvania;*

*b. volumes supplied from terminals located in states other than Pennsylvania; and*

*(iii) for each terminal whose supply is used to provide the information specified in subpart (a) and (b) above, please specify the street address, town/local governmental unit, county, state and ZIP code for each such terminal.*

Initially, Sheetz objected to Request No. 2(a)(i)-(iii), (b)(i) and (c)(i)-(iii) on the grounds that the information sought is not relevant to any claim or defense in this matter, and would impose an unreasonable burden or require an unreasonable investigation. Later, Sheetz provided answers to Request No. 2(a)(i)-(ii), and 2(c)(i)-(ii)(a), leaving only its objections to Request No. 2(a)(iii), 2(b)(i), 2(c)(ii)(b) and 2(c)(iii) still to be resolved. In addition, I note that Laurel’s Motion does not address Sheetz’s objections to Request No. 2(c)(ii)(b) and 2(c)(iii) so these requests have been waived. Consequently, this Order will be dealing only with subsections (a)(iii) and (b)(i) of Laurel Set II, Request No. 2.

In particular, Sheetz objected to Request No. 2(a)(iii) as being unduly burdensome to the extent it seeks information beyond the information provided in response to Request No. 17 of the Set I Discovery. In its Motion, Laurel explained that after Sheetz provided a response to Set I Request No. 17, it included specific claims in its testimony regarding post-reversal alternatives and limitations associated with certain of those alternatives given its business operations and the locations of specific terminals. In particular, Laurel focused on Sheetz’s testimony that trucking products is not a viable alternative due, in part, to limitations associated with the Eldorado terminals and the low likelihood that additional investments to rectify the limitations of these terminals would actually occur. *See* Motion at 10-11, *referring to* Sheetz Statement No. 1, page 7, line 2 through page 10, line 16. As such, Laurel argued that it is entitled to discover information associated with the volumes currently delivered to the terminals from which Sheetz takes its products, in order to determine whether Sheetz is affected by the limitations it claims are associated with the Eldorado terminal. According to Laurel, the requested information is essential to its analysis of Sheetz’s claims in its testimony and the importance of this information to Laurel substantially outweighs any burden associated with its production. In turn, Sheetz defends it objection by arguing that Request No. 2(a)(iii) does not seek delivery volumes, but rather the location of terminals from which Sheetz supplies its retail stores, including the “street address, town/local governmental unit and ZIP code for each such terminal.” (Emphasis added).

Neither party submitted a copy of Laurel’s Set I Request No. 17 or of Sheetz’s response to it, therefore I am unable to determine whether or not Laurel Set II Request No. 2(a)(iii) requests duplicative information. What I have determined, however, is that the information requested is relevant to one of Laurel’s defenses and that Sheetz has failed to explain why the production of the requested information is unreasonably burdensome. The language of Request 2(a), as a whole, supports Laurel’s argument that the information sought under subsection 2(a)(iii) goes to discovery associated with the volumes currently delivered to the terminals from which Sheetz takes its products. In view of the above, Laurel’s Motion to Compel responses to Request No. 2(a)(iii) is granted.

In addition, Sheetz objects to Request No. 2(b)(i) on the grounds that information related to its market share is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Sheetz argued that as market participant, it would be impacted by Laurel's Application regardless of the size of its market share, such that Request No. 2(b)(i) requests irrelevant information that is not calculated to lead to admissible evidence.

In turn, Laurel argued that the information sought by this request is necessary to determine and evaluate the credibility of, and any bias associated with, Sheetz’s claims in this proceeding regarding the competitiveness of Western Pennsylvania. According to Laurel, if Sheetz’s market share is such that it would be diminished in some way by new eastward flows of products from the Midwest, then Sheetz’s motivation is not to maintain “healthy competition” in the Pittsburgh market, but to protect its existing market position. Such information is directly relevant to Sheetz’s claims about maintaining a competitive market in Pittsburg.

The Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.321 permit a broad scope of discovery. Pursuant to 52 Pa. Code §5.321(c), 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.** I find that Laurel is entitled to discover information on the level of impact that the reversal may have on Sheetz. Consequently, Laurel’s Motion to Compel responses to Request No. 2(b)(1) is granted.

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

3. *Please state whether Sheetz makes sales of any refined petroleum products to any other marketer or refined products market participant other than the transactions described in response to question LAU-SI-I-2 above, and if the answer is anything but an unqualified negative, please provide the following for such other marketers or other refined products market participants:*

*(a) In the Pittsburgh market in Pennsylvania, and for each marketer or refined products market participant, for the period 2012 through July 2017 please provide by month the volume of gasoline (specified by winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code.*

*(b) In the Altoona/Central Pennsylvania market, and for each marketer or refined products market participant for the period 2012 through July 2017, please provide by month the volume of gasoline (specified by winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code.*

*(c) In the Eastern Pennsylvania market, including the Philadelphia area, and for each marketer or refined products market participant for the period 2013 through July 2017 please provide by month the volume of gasoline (specified by winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code.*

*(d) For each customer identified in response to subparts a. through c. above, please state the source for the refined products supplied to such customer, and by “source” this question means the refinery, or if no refinery can be identified, the wholesale sales point at which Sheetz purchased the refined products (e.g., “Booth,” “Linden,” “East Chicago,” etc.), or if FOB at a pipeline or waterborne terminal, the name and location of the terminal.*

*(e) For each marketer and/or products market participant to whom Sheetz sold any refined products at wholesale that were supplied from sources within Pennsylvania but were making retail sales outside Pennsylvania, please provide for each such marketer or refined products market participant, for the period 2013 through July 2017, by month the volume of gasoline (specified by winter conventional, summer conventional 9 lb. or 7.8 lb., or RBOB), diesel, home heating oil, jet fuel and other major refined petroleum products sold to each such customer, and the geographical location of the point of sale for each such customer, by street address and town or other local entity and ZIP code.*

Initially, Sheetz objected to Request No. 3(d)-(e) on the grounds that the information sought is not relevant to any claim or defense in this matter, and would impose an unreasonable burden or require an unreasonable investigation. However, in its Answer Sheetz indicated its intention to respond to Request No. 3(d), leaving only its objection to Request No. 3(e) to be resolved. See Answer, at 14.

In its Motion, Laurel argues that Sheetz fail to support for its conclusory statement that Request No. 3(e) would require an unreasonable investigation. According to Laurel, the nature of Sheetz’s business operations and the claims in its testimony, it is reasonable to expect that Sheetz maintains, possesses, or otherwise has access to, such information.[[1]](#footnote-1) In addition, Laurel points out Sheetz’s failure to allege that it cannot access the information Requested in No. 3(e) or that accessing this information would impose an unreasonable burden or require an unreasonable investigation. Laurel expects that Sheetz has access to this volumetric sales information through its own records or through any counter-parties to its sales contracts, and maintains that the requested information is essential to Laurel’s analysis of Sheetz’s claims in its testimony.

In its Answer, Sheetz reiterated its objection to a discovery request which seeks volumetric sales information for marketers or refined products market participants that purchase volumes in Pennsylvania but engage in retail sales outside of Pennsylvania. According to Sheetz, the commercial or geographical market decisions of marketers or refined products market participants after they purchase volumes from Sheetz in Pennsylvania bear no relation to the issues addressed in Sheetz’s Direct Testimony. See Answer, at 14. This request is unreasonably burdensome and should be denied.

After considering the position of both parties, I find that while Sheetz never explained why the production of the information requested by Request No. 3(e) was unreasonably burdensome for the Company, Laurel never specified why the commercial or geographical market decisions of marketers or refined products market participants after they purchase volumes from Sheetz in Pennsylvania are relevant to the subject matter involved in this case. Therefore, Sheetz is ordered to respond to the Request No. 3(e) if the Company possesses, collects, maintains or has access through its own records to this volumetric sales information for the marketers or products market participants to whom Sheetz sold any refined products in Pennsylvania for the period 2013 through July 2017. Alternatively, if Sheetz does not possess, collect, maintain or has access to the requested information, it should state so in its response to Laurel. However, Sheetz shall not be asked to produce the information requested if the only way the Company can access this information is through any counter-parties to its sales contracts. In this last scenario, I find that necessity of this information to Laurel does not outweigh the burden associated with its production by Sheetz.

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

*4. Regarding Mr. Lorenz’s testimony at p. 3, lines 4 through 18, regarding the alleged role of Laurel in the Pittsburgh market and potential impact of its reversal, please answer the following questions:*

*(a) Please produce copies of any of any Documents created by or for Sheetz during the period 2012 through July 2017 that reference or include any discussion, directly or indirectly, of the following topics:*

*(i) Laurel;*

*(ii) the potential reversal of Laurel, whether regarding the reversal proposal being considered in this proceeding or any other potential reversal;*

*(iii) alternatives to Laurel of transporting product to markets in Pennsylvania (including without limitation, pipeline, truck, barge, exchange or other means of transportation);*

*(iv) sales or transportation of product to customers or terminals located west of Eldorado, Pennsylvania; and*

*(v) the alleged role of Pittsburgh as the “arbitrage point between supply from the east and supply from the west”;*

*(b) Regarding Mr. Lorenz’s testimony regarding arbitrage between East Coast and Midwestern supplies of refined petroleum products:*

*(i) please provide a list of each month for the period 2012 through July 2017 during which wholesale or bulk prices available from the Midwest and the East Coast in the Pittsburgh market created an arbitrage opportunity favoring supplies from one source or the other, and provide the price differential in cents per barrel;*

*(ii) during each month of favorable arbitrage identified in subpart (b)(i) immediately above, quantify the margin that Sheetz acquired due to its use of the advantaged supply of refined products to sell in the Pittsburgh market; and*

*(iii) during each period of favorable arbitrage identified in subpart (b)(i) immediately above, quantify the value of the arbitrage passed through by Sheetz to its wholesale or retail customers;*

*(iv) provide all Documents during the period 2012 through July 2017 that analyze, relate to, reference or address arbitrage in the Pittsburgh area between East Coast and Midwest prices, and/or the margin derived by Sheetz, directly or indirectly; and*

*(v) please confirm that it was not and is not the company policy of Sheetz to pass through to its wholesale and retail customers the potential savings made available due to the Midwest/East Coast arbitrage that he describes, or to retain as much of the arbitrage benefits as possible for the owners, and please provide all documents created by Sheetz that discuss, relate to, reference or analyze this policy directly or indirectly.*

*(c) Regarding Mr. Lorenz’s comparison of the relative size of the Pittsburgh market to the market served by deliveries to Eldorado (Lorenz testimony, p. 3, lines 12-18), please answer the following questions:*

*(i) please state whether Mr. Lorenz has performed any analysis of:*

*a. the percentage of, or size of the population of the Pittsburgh area market served by terminals attached to Laurel; or*

*b. the percentage of, or size of the population served by terminals attached to Laurel at Eldorado;*

*(ii) If the answer to either subparts (c)(ii)a. or (c)(ii)b. immediately above is anything but an unqualified negative, please provide a copy of such analyses and all Documents relating to or referencing it.*

*(d) Regarding Mr. Lorenz’s testimony, at p. 3, lines 19 through 22 about the benefits of the East Coast market, please answer the following questions:*

*(i) please provide all Documents created by or on behalf of Sheetz during the time period 2012 through July 2017 analyzing, discussing, relating to or addressing, directly or indirectly:*

*a. Midwestern refined products prices;*

*b. East Coast refined products prices; and*

*c. differences between, and trends regarding, Midwestern refined products prices and East Coast refined products prices;*

*(ii) please explain in detail the assertion that East Coast products have been “the most consistent low-cost supply alternative,” and provide documentation to support that statement, as well as an explanation for the time period to which the statement applies.*

Initially, Sheetz objected to Request Nos. 4(a)(i)-(ii), (iv), and (b)(ii)-(v) on the grounds of relevance, undue burden, and unreasonable investigation. *See* 52 Pa. Code § 5.321(c), 52 Pa. Code § 5.361(a)(2), and 52 Pa. Code § 5.361(a)(4). Laurel’s Motion to Compel withdraws Request No. 4(a)(i) and requests responses to Requests Nos. 4(a)(ii), (a)(iv), and (b)(ii)-(iv). See Motion ¶ 35.

In its Motion, Laurel argues that the information sought by Request No. 4(a)(ii) is directly relevant to the credibility of Sheetz’s claims regarding Laurel’s proposed reversal, and is necessary to determine whether Sheetz’s claims in this proceeding are based on a consistent or inconsistent analysis of pipeline reversals. Motion, ¶ 37. According to Laurel, Request No. 4(a)(ii) and (iv) are designed to capture any information related to Sheetz’s interactions with or references to Laurel, which could reasonably reveal information related to Sheetz’s use of the Laurel system, or the shifting of volumes from Laurel to other alternative transportation methods or alternative markets. Motion, ¶ 41.

With regard to Request No. 4(b)(ii)-(v), Laurel argues in its Motion against an order that would permit Sheetz to avoid discovery of information that is relevant to the allegations and claims that Sheetz, its company witness, and its experts—retained by Sheetz on its own, and as part of a collective group (*i.e.*, the Indicated Parties)—have advanced in this proceeding. Motion, ¶ 38. In particular, Laurel points to claims made by Sheetz in its Protest on how it and other independent fuel retailers will “pass through” or “pass on” increased costs, which it claims will result from the reversal, to consumers. *See e.g.*, Protest of Sheetz, Docket No. A-2016-2575829, at p. 7 (“Independent fuel retailers, such as Sheetz, deliver lower fuel prices to customers by securing the lowest costs of goods…As a result [of the reversal], costs will increase and those increased costs will be passed through to Pennsylvania customers.”) (emphasis added); *Id.* (“These increased [transportation] costs would also be passed onto Western Pennsylvania consumers.”); and Indicated Parties Statement No. 1, at p. 44, lines 10-13 (“…the reversal would increase annual costs to Pittsburgh consumers, wholesalers, and retailers….”). Motion, ¶ 38. According to Laurel, the evaluation Sheetz’s profits, margins, and pricing decisions will enable Laurel and the Commission to determine the extent of any cost changes that Sheetz will pass-through to consumers because any changes in costs experienced by Sheetz will necessarily implicate its profits, margins, and pricing decisions. *Id.*

In turn, Sheetz uses its Answer to the Motion to reiterate its objections to the discovery request. In particular, Sheetz argues that information related to its margins or measures of profit is not relevant to the issues in this proceeding and is thus beyond the scope of discovery. Answer, at 17-18. Next, Sheetz maintains that Request No. 4 concerns statements made in Sheetz’s Statement No. 1, Mr. Lorenz’s testimony, which at no point discussed the impact of Laurel’s proposed reversal upon Sheetz’s own finances and economics. *Id.* According to Sheetz, Laurel cannot attempt to show relevance of discovery based on such statements by citing other statements contained in Indicated Parties’ witness Dan Arthur’s testimony. “Dr. Arthur and Mr. Lorenz are not interchangeable witnesses.” Answer, at 17. Sheetz suggests that Laurel clarify the basis for statements offered by Dr. Arthur by directly propounding discovery upon Dr. Arthur.  *Id.*

First, I note that Sheetz is a member of the Indicated Parties who sponsored the direct testimony of Dr. Arthur. Therefore, Laurel would be well within its rights to propound upon Sheetz discovery questions regarding Dr. Arthur’s testimony[[2]](#footnote-2). Second, I find that the language of Requests Nos. 4(a)(ii) and (a)(iv) does not ask for information related to Sheetz’s margins or measures of profit. While data from the information sought by this discovery request can be interpreted and interpolated to deduct the Company’s margins or measures of profit, Request Nos. 4(a)(ii) requests copies of documents discussing “the potential reversal of Laurel, whether regarding the reversal proposal being considered in this proceeding or any other potential reversal;” while Request Nos. 4(a)(iv) copies of documents discussing “sales or transportation of product to customers or terminals located west of Eldorado, Pennsylvania.”

I find that Laurel is entitled to discover information that will allow it to determine whether Sheetz’s claims in this proceeding are based on a consistent or inconsistent analysis of pipeline reversals, or to evaluate Sheetz’s use of the Laurel system, the shifting of volumes from Laurel to other alternative transportation methods or alternative markets. Consequently, Laurel’s Motion to Compel responses to Request Nos. 4(a)(ii) and (a)(iv) is granted.

With regard to Request No. 4(b)(ii)-(iv), I find that Sheetz’s Statement No. 1 Indicated Parties Statement No. 1 concerning the arbitrage between East Coast and Midwestern supplies of refined petroleum products describe the arbitrage as a stabilizing force within these markets. *See* Sheetz’s Statement No. 1, at 3-4 and 10-11. As such, I find the connection of Sheetz’s arbitrage margins, profits and pricing decisions, to the subject matter of this proceeding is too attenuated to bring the information sought in Laurel Set II, Request No. 4(b)(ii)-(iv) within the scope of this discovery proceedings. Sheetz’s burden of producing the information by Request No. 4(b)(ii)-(iv) sought far outweighs Laurel’s necessity for it. The same cannot be said for Request No. 4(b)(v) which seeks information regarding Company-wide policy regarding the passing of arbitrage savings through to its wholesale and retail customers. Consequently, Laurel’s Motion to Compel a response to is denied with regard to Request No. 4(b)(ii)-(iv), but is granted with regard to Request No. 4(b)(v).

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

7. *Regarding Mr. Lorenz’s testimony at p. 4, lines 6 through 12, please answer the following questions:*

*(a) Please provide a detailed explanation of why Mr. Lorenz believes that Pittsburgh’s role as “arbitrage point” means that it “also plays a significant role in the supply security of the Pittsburgh area,” apart from the statements in the next two sentences, and in particular please clarify whether Mr. Lorenz refers to the physical supply provided by Laurel’s flow from the east, rather than the price issues associated with “arbitrage.”*

*(b) Please provide a detailed explanation of Mr. Lorenz’s contention that “[a]ny material disruption to supply from the west could lead to supply shortages in the Pittsburgh area,” and in addition please answer the following questions:*

*(i) Please provide a list of all supply disruptions to the Pittsburgh market during the period 2012 through July 2017 known to Mr. Lorenz, and describe the cause and the impact on Sheetz and on consumers, including documentation of any “supply shortages”.*

*(ii) Please provide a list of all supply disruptions to the Altoona or eastern Pennsylvania markets during the period 2012 through July 2017 known to Mr. Lorenz, and describe the cause and the impact on Sheetz and on consumers, including documentation of any “supply shortages.*

Initially, Sheetz objected to Request Nos. 7(a) and (b). Notwithstanding its objection, Sheetz responded to Request No. 7(a). Sheetz objection to Request No. 7(b) is on the grounds of relevancy to the extent the question seeks information on the impact of supply disruptions upon individual market participants (including Sheetz) that are not relevant to the market impacts at issue in this proceeding. Answer, at 19-2. Sheetz responded to Request No. 7(b) with a description of supply disruptions known by Mr. Lorenz to have impacted the Pittsburgh market.

In its Motion, Laurel argues that the information sought by Request No. 7(b) is directly relevant to Sheetz’s claims that the reversal would increase the risks of supply disruptions and price spikes to the Pittsburgh-area. Laurel points out Sheetz’s statement that “…a post-reversal [price] spike due to unplanned outages could reach even higher levels than previously experienced and for longer duration,” Sheetz Statement No. 1, page 16, lines 5-7, and argues that, in order to evaluate these claims, it is essential that Laurel be permitted to discover what information Sheetz collects, maintains, or possesses, regarding the impacts of historic supply disruptions on its own products and services. Motion ¶ 48. To the extent that Sheetz argues that the information sought by Request No. 7(b) is irrelevant based on its argument that its claims are of “broader market impacts,” Laurel responds by pointing out that Sheetz has repeatedly advanced claims of its own economic harm as negative impacts that would result from the reversal. According to Laurel, cannot avoid discovery by attempting to limit the scope of harms to “the broader market.” Per Laurel, Sheetz’s entity specific information is highly relevant and necessary to test several aspects of its broader market impacts theory because it is necessary to evaluated the impact on Sheetz to determine the impact on the overall market. Motion at ¶ 22.

Laurel’s Motion however does not explain why information on all supply disruptions to the Altoona or eastern Pennsylvania markets is relevant to the market impacts at issue in this proceeding. Consequently, Laurel’s Motion will be granted with regard to Request No. 7(b)(i) but not with regard to Request No. 7(b)(ii)

**Laurel – Set II, Request No. 8 provides as follows:**

*8. Regarding Mr. Lorenz’s testimony at p. 5, line 15 through p. 6, line 2, regarding the alleged limitations on the use of barges to supply the Pittsburgh market, please answer the following questions:*

*(a) Please explain in detail whether and, if so, to what extent, Mr. Lorenz has had personal responsibility for the use of barges to supply refined petroleum products to the Pittsburgh area, either in his work at Sheetz or for Mobil Oil Corp.*

*(b) Please provide a list of all contracts on or on behalf of Sheetz for either transportation via barge to supply the Pittsburgh market, or for the purchase of refined products by Sheetz at a terminal in the Pittsburgh market that was delivered by barge.*

*(c) Please provide a copy of each contract listed in response to subpart (b) immediately above.*

*(d) Please provide all Documents created by or on behalf of Sheetz relating to the actual or potential use of barges to supply refined petroleum products in the Pittsburgh market during the period 2012 through July 2017;*

*(e) Please provide a complete description of Mr. Lorenz’s knowledge of:*

*(i) the volume of refined petroleum products delivered to Pittsburgh market destinations;*

*(ii) the location of terminals capable of receiving barge deliveries of refined petroleum products in the Pittsburgh market;*

*(iii) the prices for the transportation of refined petroleum products to the Pittsburgh market via barge;*

*(iv) whether Mr. Lorenz relies on specific personal knowledge regarding his statement that “[t]hese variables make barge supply sporadic at best and thus an unreliable alternative,” and if so please provide all specifics supporting this conclusion*

*(v) regarding the term “[h]istorically” at line 17, please state the time period encompassed by this term, and please explain Mr. Lorenz’s basis for concluding that “barging has played an insignificant role as a source of petroleum products and to my knowledge, only a minor role for the Pittsburgh region.”*

*(vi) regarding the statement at lines 19-21 that “[r]amping up this source of supply would take a tremendous risk tolerance for uncertainties in product availability and supply reliability in addition to requiring substantial capital investment to increase barging capacity and meet emission limits,” please answer the following questions:*

*a. Please explain in detail the basis for the statement as it regards product availability and supply reliability.*

*b. Please explain Mr. Lorenz’s basis for contending that investment would be needed for increased barging, what dollar value or range of values he asserts would be required, whether he believes that there is insufficient barge-accessible terminal capacity in the Pittsburgh market, whether he believes that capital investment would be needed with respect to the supply of barges, and the complete basis for his conclusions or premises regarding such investments.*

(f) *Please provide Mr. Lorenz’s definition of the term “Pittsburgh market” as he uses it at line 16, as defined by geographical area (e.g., by included counties), and please state whether his testimony means this same definition whenever it references “Pittsburgh” or the “Pittsburgh area” or the “Pittsburgh market,” and if the answer is anything but an unqualified affirmative, please provide any alternative geographic areas to which Mr. Lorenz refers when using these terms.*

Initially, Sheetz objected to Request Nos. 8(a)–(c) on the grounds of relevance, undue burden, and unreasonable investigation. *See* 52 Pa. Code § 5.321(c), 52 Pa. Code § 5.361(a)(2), and 52 Pa. Code § 5.361(a)(4). Notwithstanding the objections, Sheetz responded to Request Nos. 8(b)-(c).

With regard Request No. 8(a), Sheetz avers that, similar to Laurel’s Motion to Compel a response to Request No. 1(b), the information sought by Request No. 8(a) is not relevant to this proceeding. According to Sheetz, Mr. Lorenz's job duties while at Mobil Oil Corp. have no bearing on his testimony in this proceeding, particularly as Mr. Lorenz has been employed by Sheetz for 17 years. Answer, at 22.

In response, Laurel argues Sheetz has offered this witness, in part, on the basis of his knowledge and expertise gained during his employment with Sheetz and previously in the petroleum products industry. As such, Laurel is entitled to inquire into the breadth of his knowledge, regardless of whether that knowledge is based on his current or prior employment. Motion, ¶ 52.

Laurel’s Motion to Compel a response to Request No. 8(a) is granted in accordance with my ruling regarding Request 1(b).

**Laurel – Set II, Request No. 10 provides as follows:**

*10. Regarding Mr. Lorenz’s testimony at p. 7, lines 1 through 18, please answer the following questions:*

*(a) Regarding the reference, “eastern-sourced product, which is the lower cost alternative the majority of the time,” please describe in detail Mr. Lorenz’s basis for this contention, and also explain whether the statement applies to all refined petroleum products or only certain refined petroleum products, and produce all Documents supporting this conclusion.*

*(b) In light of the discussion of truck movements and likely truck transportation, including the statement, “[t]ypically, trucks already move product westwards from Eldorado to the Delmont, PA area,” please produce all Documents created by or on behalf of Sheetz that analyze, reference, discuss, reflect or address the delivery of refined petroleum products to either Sheetz-owned or non-Sheetz-owned destinations, from pipeline terminals connected to the Laurel system, or the Sunoco Pipeline L.P. and/or Energy Transfer Partners system at locations in Western and Central Pennsylvania, including Eldorado, Delmont, Greensburg, Coraopolis, Neville Island, Blawnox and Pittsburgh.*

*(c) Please state whether Mr. Lorenz is aware that trucks have been transporting refined petroleum products from terminals at Delmont eastward towards Eldorado since the commencement of service by Sunoco Pipeline L.P. and/or Energy Transfer Partners to Delmont, and please supply all Documents related to, referencing, analyzing or discussing such movements.*

*(d) Regarding the contention that the distance from Eldorado to Pittsburgh is “over 120 miles,” please explain why Mr. Lorenz assumes that all or part of the trucks from Eldorado would transport refined petroleum products from Eldorado to the city limits of Pittsburgh, when the Sheetz and other service stations supplied by pipeline terminals are located throughout the multi-county Pittsburgh market, and please state whether Mr. Lorenz has analyzed the difficulty of trucking to the actual service station destinations in the Pittsburgh market from Eldorado, and if so, please provide all Documents relating to such analysis.*

*(e) Regarding the assertion that moving product to the Pittsburgh market from Eldorado would require “a major investment in more Commercial Drivers License (“CDL”) drivers and trucks to make that happen,” please provide any calculations that Mr. Lorenz has prepared quantifying such investment and provide all assumptions and Documents related to such calculations.*

*(f) Regarding Mr. Lorenz’s statement that it is “highly unlikely that the Eldorado terminals have the adequate tankage or loading capacity to supply more trucking volumes to the Pittsburgh market without substantial additional investment,” please define what the witness means by “more” (i.e. one incremental tanker truck per day, 10 incremental tanker trucks per day, etc.), the basis for his contention, his knowledge of the current terminal and truck rack throughput capacity at the Eldorado terminals, and what sum or range of sums he means by “substantial investment.”*

Initially, Sheetz objected to Request No. 10(b) as seeking information that is irrelevant, and as unreasonably burdensome. Sheetz argued that information related to the delivery of refined petroleum products from the Sonoco Pipeline L.P. and/or Energy Transfer Partners systems would require an unreasonably voluminous document production and is not reasonably calculated to lead to the discovery of admissible evidence.

In its Motion, Laurel points to Sheetz’s statement that “…the alternative supply resources referenced in Laurel’s Application would not effectively mitigate the adverse economic and operational benefits that the Laurel pipeline provides to the Pittsburgh market,” Sheetz Statement No. 1, page 5, line 21 through page 6, line 2 (emphasis added), to aver that Sheetz has put at issue its current and projected future use of “alternative supply resources referenced in Laurel’s Application,” one of which was “Sunoco Pipeline, L.P (“Sunoco”), from the Midwest.” *See* Application ¶ 12. According to Laurel, Sheetz cannot argue that information related to its use of an alternative that it specifically claims is inadequate in its Direct Testimony is irrelevant to this proceeding. Per Laurel, such information is critical to adequately assess and evaluate the validity of Sheetz’s claims.

In its Answer, Sheetz argues that Laurel’s request would encompass any document analyzing, referencing, discussing, reflecting or addressing the delivery of refined petroleum products from not just Laurel's pipeline system, but from Sunoco Pipeline L.P and/or Energy Transfer Partners systems in Western and Central Pennsylvania. According to Sheetz, this information would require an unreasonably voluminous document production and is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, Sheetz argues that Laurel’s Motion fails to demonstrate how shipments from terminals not connected to Laurel’s system are relevant to his proceeding.

After carefully considering the position of both parties, I find that the connection between Sheetz’s current use of alternative supply resources and the capacity of these alternative supply resources to respond to changes effectuated by Laurel’s proposed reversal is too attenuated to justify the burden of asking Sheetz to produce “all documents created by or on behalf of Sheetz that analyze, reference, discuss, reflect or address the delivery of refined petroleum products to either Sheetz-owned or non-Sheetz-owned destinations, from pipeline terminals connected to the Laurel system, or the Sunoco Pipeline L.P. and/or Energy Transfer Partners system at locations in Western and Central Pennsylvania, including Eldorado, Delmont, Greensburg, Coraopolis, Neville Island, Blawnox and Pittsburgh.” Therefore, Laurel’s Motion to Compel a response to Laurel Set II, Request No. 10(b) is denied.

THEREFORE,

IT IS ORDERED:

1. That Laurel’s Motion to Compel responses to Laurel Set II is granted, in part, and denied, in part, in accordance with the discussion, *supra.*

2. That Laurel’s Motion to Compel responses to Laurel Set II is granted with regard Request Nos. 1(b), 2(a)(iii), 2(b)(i), 3(e), 4(a)(ii)-(iv), 2(b)(v), 7(b)(i), and 8(a).

3. That Laurel’s Motion to Compel responses to Laurel Set II is denied with regard Request Nos. 4(b)(ii)-(iv), 7(b)(ii), and 10(b).

4. That Sheetz, Inc. shall serve upon Laurel Pipe Line Company, L.P. full and complete responses to Laurel – Set II, Request Nos. 1(b), 2(a)(iii), 2(b)(i), 3(e), 4(a)(ii)-(iv), 4(b)(v), 7(b)(i), and 8(a) by no later than October 11, 2017.

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| --- | --- | --- | --- |
| Date: | September 26, 2017 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

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

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1. If it does not, then Sheetz should alternatively be required to state it does not possess, collect, maintain or have access to this volumetric sales information. [↑](#footnote-ref-1)
2. If for whatever reason Sheetz believes that information sought is more appropriately produces by the Indicated Parties as a group, then Sheetz should have stated so instead of suggesting that further discovery be propounded upon Dr. Arthur as an individual. [↑](#footnote-ref-2)