**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| **Inquiry Regarding Recovery** | ) | **Docket No.** |
| **For Income Tax Costs** | ) | **PL17-1-000** |

# REPLY COMMENTS OF THE MASTER LIMITED PARTNERSHIP ASSOCIATION

The Master Limited Partnership Association ("MLPA") offers these reply comments in response to the comments submitted with regard to the Notice of Inquiry issued by the Federal Energy Regulatory Commission ("the Commission") on December 15, 2016, in the referenced docket. As noted in our original comments, MLPA is a trade association representing master limited partnerships ("MLPs") and those who work with them. Our members are responsible for the construction, operation, and maintenance of hundreds of thousands of miles of oil, natural gas, natural gas liquid (NGL), and refined product pipelines.

MLPA strongly rejects the arguments of those opposing a tax allowance for MLPs – that such an allowance is provided for a "phantom tax" and allows MLP investors a "double recovery" or "over recovery" – as contrary to fact. MLPA rejects equally the argument that a tax allowance for MLPs is "unlawful" and does not meet the Court of Appeals' "reasoned basis" standard. The tax treatment accorded to MLPs under I.R.C. §7704 and the continuation of that tax treatment into pipeline rates are rational and reasonable, and have been an essential factor in MLPs' ability to rapidly and efficiently build out the energy infrastructure needed for consumers to benefit from the abundance of oil, gas and NGLs .

As was discussed at length in our initial submission, it is simply not true that no tax is paid on the earnings of an MLP-owned pipeline. Under long-established rules of partnership

taxation, there is an actual tax liability associated with income derived by an MLP, which is passed through to the MLP's partners. Each partner has a tax liability on its allocated share of the MLP's income, often at rates that are higher than the corporate rate. This taxation is completely separate from the distributions representing the unitholders' return on their investment, which are subject to tax when the units are sold or transferred and are more heavily taxed than corporate dividends.

Moreover, the comments of the Interstate Natural Gas Association of America ("INGAA") provide a thorough and well-documented analysis demonstrating not only that the income tax allowance is a reasonable and necessary component of cost-of-service rate making for MLP pipelines, but also that the tax allowance does not result in any "double recovery" or "over recovery." Rather, in the long term, market data demonstrate that the returns for MLP and corporate pipelines are comparable and that income taxes attributable to MLP pipelines' income are not reflected in those returns. MLPA endorses the comments of INGAA and the accompanying expert testimony of Dr. Merle Erickson and Barry Sullivan as providing the necessary justification required for the continuation of the Commission's current policy.

MLPA also endorses the Reply Comments submitted in the instant docket by INGAA, which respond to the initial comments of parties that seek to eliminate or modify the Commission's existing income tax allowance policy or modify the Commission's DCF model. MLPA notes that no commenter has provided any credible evidence or empirical data demonstrating that the Commission's current tax allowance policy either results in a double recovery or that the returns for MLP and corporate pipeline investors have not been commensurate under the Commission's current policy. Therefore, MLPA urges the Commission

to reject such commenters' requests regarding the elimination of an income tax allowance for MLP owned pipelines.

Finally, there is nothing unlawful about the Commission's income tax allowance policy or the pipeline rates that result from it. The Court of Appeals made clear both in *ExxonMobil*[1] and *United Airlines*[2] that the Commission may lawfully adopt a policy of including a tax allowance in rates for MLP-owned pipelines as long as it could demonstrate a reasoned basis for doing so. *United Airlines* did not change the Court's ruling; it simply specified that the "reasoned basis" must address the "double recovery" issue. The issue has been thoroughly addressed by the comments of INGAA and the accompanying expert testimony. Accordingly, the Commission can and should continue its current income tax allowance policy. MLPA urges the Commission not to change a policy that for over a decade has worked well and allowed MLPs to perform the function intended by Congress.

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[1] *ExxonMobil Oil Corp. v. FERC,* 487 F.3d 945 (D.C. Cir. 2007).

[2] *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016).