

**Inquiry Regarding the Commission's Policy)
for Recovery of Income Tax Costs) Docket No. PL17-1
)**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ the Master Limited Partnership Association (“MLPA”) hereby respectfully requests clarification of the Commission’s “Revised Policy Statement on Treatment of Income Taxes” issued March 15, 2018 in the referenced proceeding (“Revised Policy Statement”).² In support hereof, MLPA states the following:

I. PERTINENT BACKGROUND

In 2007, the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) found that the Commission had justified its Income Tax Policy Statement issued in 2005,³ concluding that it was not arbitrary or capricious for the Commission to allow regulated limited partnership pipelines to recover an income tax allowance to the extent that their partners, both individual and corporate, incurred actual or potential tax liability on their distributive share of the partnership income.⁴ Subsequently, in another case also

¹ 18 C.F.R. § 385.212 (2018).

² *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (2018).

³ *Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139, at P 33 (2005) (“2005 Tax Policy Statement”).

⁴ *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 951-55 (D.C. Cir. 2007) (“*ExxonMobil*”).

involving SFPP, L.P. (“SFPP”), a master limited partnership (“MLP”) pipeline that filed a rate case in 2008, the D.C. Circuit found that the Commission had not provided “sufficient justification for its conclusion that there is no double recovery of taxes for partnership pipelines receiving a tax allowance in addition to the discounted cash flow return on equity.”⁵ However, the D.C. Circuit clarified that “we held in *ExxonMobil* that, to the extent FERC has a reasoned basis for granting a tax allowance to partnership pipelines, it may do so.”⁶

On remand, the Commission issued a Notice of Inquiry seeking comments regarding how to address any double recovery resulting from the Commission’s current income tax allowance and rate of return policies, consistent with *United Airlines*.⁷ After receiving initial and reply comments from a number of industry participants, the Commission issued the Revised Policy Statement announcing that it will revise the 2005 Tax Policy Statement and “will no longer permit MLPs to recover an income tax allowance in their cost of service.”⁸ The Commission stated that it “will address the application of *United Airlines* to non-MLP partnership or other pass-through business forms as those issues arise in subsequent proceedings.”⁹ Thus, only MLPs are singled out and not permitted to seek recovery of an income tax allowance on a case-by-case basis. The demonstrated market consequences of the Revised Policy Statement and recent and potential corporate conversions reflect that the Commission’s denial of an income tax

⁵ *United Airlines, Inc. v. FERC*, 827 F.3d 122, 136-37 (D.C. Cir. 2016) (“*United Airlines*”).

⁶ *Id.* at 135 (citing *ExxonMobil*, 487 F.3d at 955).

⁷ *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (2016) (“NOI”).

⁸ Revised Policy Statement at PP 2, 8.

⁹ Revised Policy Statement at P 3.

allowance to all MLPs has and will deter investment. As explained herein, the decision to treat all MLPs generically but allow all non-MLPs and other business formations to seek recovery of an income tax allowance on a case-by-case basis is arbitrary and capricious. Therefore, the Commission should clarify the Revised Policy Statement by finding that whether an MLP or any other partnership form may recover an income tax allowance will be determined on a case-by-case basis.

II. DISCUSSION

A. The Commission's Reliance on a Single MLP As the Basis for Categorically Excluding All MLPs From An Income Tax Allowance Is Not Reasoned Decision Making

In *United Airlines*, the D.C. Circuit found only that the Commission had failed to demonstrate there was no double recovery of income tax costs when it permitted SFPP to recover an income tax allowance in its cost of service rates and to earn a return on equity pursuant to the DCF methodology.¹⁰ This conclusion was based upon three essential “facts” in the record before it at that time (which was developed almost a decade ago) that the D.C. Circuit deemed to have been agreed upon.¹¹ Notably, the D. C. Circuit did not conclude that there could not be a “sufficient justification;” it concluded only that the Commission had not provided one in that case.

The record in this proceeding, which includes ten years of data, sworn affidavits, and has the benefit of being fully developed with industry-wide participation, differs from the one before the court in *ExxonMobil* and several parties have shown that there is

¹⁰ *United Airlines*, 827 F.3d at 126-27, 136.

¹¹ *Id.* at 136-37.

neither a double recovery¹² nor a concern regarding parity. However, without analyzing a single MLP other than SFPP, as described in 2008, the Commission issued a Revised Policy Statement applying to all MLPs that erroneously relies upon the D.C. Circuit's finding in *United Airlines*.¹³

In the Revised Policy Statement, the Commission has failed to justify its decision to bar all MLPs, regardless of structure, from seeking to recover an income tax allowance. Despite the sweeping pronouncement that the Revised Policy Statement will apply to "MLPs," the Commission provides little specificity as to what "MLP" means in this context. The Commission identifies SFPP as an MLP, and notes that an MLP is a publicly-traded partnership under the Internal Revenue Code that receives at least 90 percent of its income from certain qualifying sources, citing Section 7704 of the Treasury Regulations.¹⁴ The Commission further noted that at the time of the rate filing, Kinder Morgan Energy Partners, an MLP, indirectly owned a 99% percent general partner interest in SFPP.¹⁵ This is the extent of the specificity provided by the Commission when it categorically excludes all MLPs from an income tax allowance recovery. MLPA submits that this generic information falls far short of analysis of an MLP pipeline's

¹² *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Comments of the Interstate Natural Gas Association, Docket No. PL17-1, at 28-40 (filed Mar. 8, 2017); *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Comments of the Association of Oil Pipe Lines, Docket No. PL17-1, at 20-38 (filed Mar. 8, 2017); *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Comments of SFPP, L.P., Docket No. PL17-1, at 13-26 (filed Mar. 8, 2017).

¹³ *United Airlines*, 827 F.3d at 136.

¹⁴ Revised Policy Statement at P 1, n.3. The Commission once in the Revised Policy Statement describes the applicability of its order to "MLPs like SFPP." Revised Policy Statement at P 3.

¹⁵ Revised Policy Statement at P 1, n.3 (citing *SFPP, L.P.*, 134 FERC ¶ 61,121, at P 74 (2011)).

structure and does not constitute reasoned decision making.¹⁶ This description of a single MLP is not a sufficient basis to determine that all MLPs, no matter what their structure, or the return on equity from the DCF analysis, should be precluded from receiving an income tax allowance. Without an analysis of the specific MLP structure and ownership, the Commission has not justified why a particular MLP pipeline, such as one that has predominantly corporate partners, should not receive an income tax allowance.

The Commission should either limit the applicability of the policy statement to SFPP's specific MLP structure in 2008, because that is the only MLP discussed in the entire Revised Policy Statement, or it should acknowledge that it failed to address all MLP structures and clarify that the policy will be applied on a case by case basis.

B. The Commission Did Not Analyze Every MLP Structure Before Determining that Every MLP is Precluded From Recovering An Income Tax Allowance

In the Revised Policy Statement, the Commission did not analyze any of the multiple forms of MLP structures. The Commission's assumption appears to be that an "MLP" has a single structure as compared to other partnerships and business forms, of which there are many. This assumption is incorrect because each existing MLP has a different mix of ownership (including significant corporate ownership)¹⁷ as well as a variety of subsidiaries and investments (also including corporations). The Commission's failure to distinguish among the various MLP structures for purposes of permitting an MLP to seek recovery of an income tax allowance is not reasoned decisionmaking.

¹⁶ As discussed below there are a variety of structures, including those that involve C-corporations, and the Commission has failed to explain why it is justified in lumping all MLPs, regardless of structure, into a category excluded from potentially recovering an income tax allowance.

¹⁷ A survey of 60 MLPs indicates that corporations own 43.2% of such MLPs equity by value. Appendix B includes slides reflecting value of MLP ownership by equity type (slide 1) and number of MLP investors by entity type (slide 2).

While the Commission categorically excludes an income tax allowance for MLPs, the Revised Policy Statement injects uncertainty regarding an income tax allowance for all but one other pipeline ownership structure, illustrated in slide 1: a pipeline is 100% owned by a corporation may recover an income tax allowance.¹⁸ Taking the Commission at its word, non-MLP partnerships will have an opportunity to argue for the inclusion of an income tax allowance “in subsequent proceedings.”¹⁹ Such disparate treatment may result in treatment that is either punitive or arbitrary. MLPA submits that consideration of the following partnership structures aptly illustrates the Commission’s failure to engage in reasoned decision by denying all MLPs an income tax allowance regardless of structure or mix of ownership, as illustrated in slides 2 through 7 and summarized below:

- In Structure slide 2, a pipeline is 100% owned by an MLP with 100% public ownership: an income tax allowance cannot be recovered;
- In Structure slide 3, a pipeline is owned by a private partnership between two corporations, each with a 50% partnership interest: income tax allowance may be recovered;
- In Structure slide 4, a pipeline is owned by a private partnership that includes two corporations (49.5% interest for each) and a single individual with a 1% interest: income tax allowance may be recovered;
- In Structure slide 5, a pipeline owned by an MLP, with a 1% public ownership and two other corporate partners each with a 49.5% partnership interest: an income tax allowance cannot be recovered;
- In Structure slide 6, a pipeline is owned by a corporation under an MLP: an income tax allowance may be recovered; and
- In Structure slide 7, which is similar to structure 6, however the pipeline is owned by an MLP through an entity disregarded for federal income tax purposes rather

¹⁸ MLPA has attached hereto as Appendix A several schematics of the structures described in these examples.

¹⁹ Revised Policy Statement at P 3. In addition to the arguments regarding the inclusion of the income tax allowance, the categorical exclusion of MLPs from such consideration likely will lead to litigation about that issue as well.

than by the corporation under the MLP: an income tax allowance cannot be recovered.

These examples reflect the arbitrary, and we believe punitive, results of applying the categorical exclusion to all MLPs without regard to the specific facts, and demonstrate why the Commission should clarify that whether an MLP or any other partnership form may recover an income tax allowance will be determined on a case-by-case basis.²⁰

Furthermore, MLPA submits that the results would be more arbitrary when applied to the actual, complex organizational structures of existing MLPs and that the punitive and arbitrary results of the sweepingly broad Revised Policy Statement will have significant financial consequences. The Commission did not analyze various MLPs to show that in every instance a double recovery results from recovery of an income tax allowance. Therefore, the Commission should not single out the “MLP” for disallowance of the income tax allowance without reviewing the specific facts of each MLP in individual proceedings to determine the extent, if any, of double recovery.

Allowing each MLP to pursue recovery of an income tax allowance in individual proceedings will ensure that the Commission has an opportunity to address the income tax allowance based on specific facts as opposed to overly-simplistic generalization. The aforementioned examples leave one to wonder why an MLP with two significant corporate partners and only a small percentage of the partnership interests held by the public should be precluded from any income tax allowance. Even without regard to the consideration of confidence in the financial integrity of the enterprise required by *Hope*,

²⁰ We note that in the case of the oil pipeline index modifications contemplated by the Commission, the methodology used by the Commission would not afford liquids pipelines the opportunity for a case-by-case determination. The Commission-created oil pipeline index would be derived in part from the costs incurred by MLPs no longer recovering an income tax allowance, but would then be applied to all pipelines with indexed rates, regardless of the corporate form of the pipeline itself, an overly broad result given the multiplicity of structures described in the slides above.

that result seems arbitrary. At what percentage should the public interest preclude recovery? Such questions cannot be addressed without specific facts addressed in individual proceedings.

Several commenters, including Natural Gas Indicated Shippers, Berkshire Hathaway Energy Company (“Berkshire Hathaway”), Dominion Resources, Inc. (“Dominion”), and Edison Electric Institute (“EEI”) addressed the issue of the multiplicity business forms or partnership structures. Berkshire Hathaway, Dominion and EEI each submit that partnerships with C-corporation owners should be entitled to an income tax allowance.²¹ Natural Gas Indicated Shippers take a hybrid approach asserting that where there are multiple publicly-traded owners of the pipeline company, the Commission should limit the income tax allowance to the percentage of ownership held by a publicly-traded corporation.²² The Commission did not address these comments that clearly reflect recognition of the need for different treatment of MLPs depending on their structure or ownership. MLPA respectfully submits that the Commission has failed to justify why an MLP that has only, for example, a 5% interest held by non-corporate investors should not recover any income tax allowance.

In addition, the Commission’s policy also results in wholly unjustifiable distinctions as to eligibility for an income tax allowance. Further, the arbitrariness of the Commission’s approach is shown by the following example regarding private

²¹ *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, Comments of Berkshire Hathaway Energy, Docket No. PL17-1, at 3-4 (filed Mar. 8, 2017); *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, Comments of Dominion Energy, Docket No. PL17-1, at 9-16 (filed Mar. 8, 2017); *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, Comments of the Edison Electric Institute, Docket No. PL17-1, at 8-9 (filed Mar. 8, 2017).

²² *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, Comments of the Natural Gas Indicated Shippers, Docket No. PL17-1, at 19 (filed Mar. 8, 2017).

partnerships.²³ MLPA submits that a private partnership with 100 investors (Structure slide 8), which meets the federal income tax requirements for being considered readily tradable on a secondary market, but has no more than 100 partners, is not considered a publicly-traded MLP. Presumably, because it is not a publicly-traded MLP, the private partnership is not precluded from seeking to recover an income tax allowance. However, if a single additional investor is added to the private partnership (Structure slide 9), the pipeline would be owned by a private partnership among 101 investors, and considered publicly-traded. This contrast aptly illustrates that the Commission should not have determined that an entire category of partnerships is not eligible to seek recovery of an income tax allowance.

MLPA respectfully submits that the Commission's pronouncement impacting all MLPs and its failure to analyze specific MLP structures and ownership is not reasoned decision-making. The Commission should clarify that the Revised Policy Statement is general guidance and an MLP, like any other partnership, must bear the burden to show that it is entitled to recover an income tax allowance and that there is no double recovery in each individual proceeding.

C. The Commission Fails to Justify its Disparate Treatment of MLPs vs Non-MLPs

The generic treatment of MLPs in the Revised Policy Statement is not justified in light of the case-by-case basis afforded to non-MLPs. The Commission does not address why the MLP is treated differently from all other partnerships and pass through entities. Although the Commission did not hesitate to paint all MLPs with a single broad brush

²³ See Appendix A, Structure slides 8 and 9. Structure slide 11 reflects a joint venture with a 99% corporate ownership and 1% MLP interest: it is unclear how the Commission will view this ownership structure.

without supporting analysis, the Commission was unwilling to address any other partnership structure. The Commission stated, “this record does not provide a basis for addressing the *United Airlines* double-recovery issue for the innumerable partnership and other pass-through business forms that are not MLPs like SFPP.”²⁴ The truth is that there is likely no MLP exactly “like SFPP” in terms of ownership or subsidiary constitution. The Commission offers no explanation for this distinction but saw fit to expressly state, “[t]his Revised Policy Statement does not address other, non-MLP partnership or other pass-through business forms.”²⁵ MLPs should be addressed on a case-by-case basis for the very same reason that a generic proceeding is not well-suited to address non-MLP partnership formations.²⁶ The Commission fails to provide any justification for denying an income tax allowance to all MLPs without regard to the specific facts of an individual pipeline proceeding, but allows non-MLP partnerships and other business formations to be addressed on a case-by-case basis. Thus, the Commission has failed to engage in reasoned decision-making and must clarify the Revised Policy Statement by stating that MLPs will be addressed on the same case-by case-basis as other partnerships and pass-through business forms.

D. The Revised Policy Statement Denies MLPs the Right to Raise the Income Tax Allowance Issue in Individual Proceedings

MLPA submits that the Commission’s blanket policy denying all MLPs an income tax allowance wrongfully deprives MLPs of the opportunity to develop a record in an individual proceeding, substantially eliminating the rights of all MLPs to

²⁴ Revised Policy Statement at P 3.

²⁵ Revised Policy Statement at P 45.

²⁶ Revised Policy Statement at P 3.

demonstrate that an income tax allowance does not result in a double recovery. This is perhaps an unintended consequence of the Commission's revised policy, but it again unjustly and unjustifiably limits the rights of MLP pipelines to litigate an issue in their financial interest. In the more than twenty years that parties have litigated the issue of income tax allowance recovery, including the most recent period under the 2005 Tax Policy Statement when the Commission repeatedly dismissed arguments attacking that policy statement, the Commission never denied parties the right to raise the issue. We see no reason it should start denying parties those rights now.

E. The Commission Should Clarify That MLPs Will Be Addressed On a Case By Case Basis In Light Of the Demonstrated Market Consequences and Announced and Potential Corporate Conversions

The Commission should clarify its policy to apply on a case by case basis to meet the standards of *Hope*.²⁷

1. *Legitimacy of Hope Concerns*

In the Revised Policy Statement, the Commission concludes:

*Pipelines claim that removal of the income tax allowance for MLPs will deny pipelines adequate recovery under Hope and deter investment. This is not the case.*²⁸

While the Commission could not reasonably have been expected to predict the actual impact of the Revised Policy Statement in responses to the NOI, those impacts have been immediate, negative and the substantial decline in the market value of many MLP equities may impair their ability to raise capital on acceptable terms. We have attached as Appendix C slides which demonstrate the dramatic decline in MLP market value

²⁷ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (“*Hope*”); *Bluefield Water Works & Improvement Co. v. Public Service Comm’n*, 262 U.S. 679 (1923) (returns should be sufficient to assure confidence in the financial integrity of the enterprise and to maintain credit and attract capital).

²⁸ Revised Policy Statement at P 44 (citations omitted) (emphasis added).

following the issuance of the Revised Policy Statement. We will summarize those impacts as well as comments published by investment analysts following the issuance of the Revised Policy Statement that are fundamentally at odds with the Commission's belief that the Revised Policy Statement raised no *Hope* concerns because it would not deter MLP investment:

- By the close of trading on March 15, 2018, the date of the issuance of the Revised Policy Statement, energy focused MLPs had lost \$15.8 billion in market capitalization;
- From March 15, 2018 through market close on April 11, 2018, energy focused MLPs had lost \$14 billion in market capitalization;²⁹
- Multiple MLPs holding material interstate pipelines have experienced the loss of between 25% and 40% of their market value;
- Losses in excess of \$14 billion in market capitalization translate directly into individual losses to two million distinct MLP investors, many of whom are retirees; a survey of 60 MLPs indicates that approximately 50.65% of investors, representing \$49 billion dollars, are retirement accounts.³⁰

The impact on any publicly traded businesses of such significant drops in market value is typically severe, negatively impacting anticipated equity financing for capital expenditures and long-term development plans. Investment analysts have characterized the impact of the Revised Policy Statement on MLPs as follows:

- Tom Abrams of Morgan Stanley published on March 23, 2018 “we could see retail holders moving away from the structure, particularly if there is uncertainty as pass through owners in the new regime.”

²⁹ Over the past week, MLP equities have increased somewhat in value due to largely non-MLP specific factors such as broader market strength and improving crude oil prices. However, while the MLP equity values have recovered, modestly, the overall impact of the Revised Policy Statement has been materially negative with Wells Fargo analyst Michael Blum reporting as recently as today, April 13, 2018, “the FERC ruling continues to consume a significant amount of our time and be a primary topic among investors...on a practical level, we believe the FERC ruling makes MLPs less attractive as an investment and raised their cost of equity capital overall.”

³⁰ Appendix B, slide 2.

- Baird Equity Research reported on March 15, 2018 “Thursday’s [legislation] [Revised Policy Statement] leaves midstream investors... incrementally leery of further capital commitment.”
- Darren Horowitz of Raymond James reported on March 19, 2018, “Unfortunately, unexpected +10% declines in individual stocks and approximately 9% declines in the index are one of the things investors do not want from this supposedly stable...subset of the energy market. For some this may be the ‘final straw.’”

We find these statements diametrically at odds with the Commission’s conclusion that the Revised Policy Statement would not deter investment in MLPS nor raise implications under *Hope*. We believe that because information is now available to the Commission demonstrating actual impact rather than hypothetical projections reflected in the record to date means that individual pipelines must be provided the opportunity to provide their own *Hope* based arguments in the context of individual rate proceedings.

2. *Revisiting Congressional Intent in Light of Recent Developments*

The market’s reaction to the Revised Policy Statement provides a hindsight test to another conclusion reached by the Commission in the Revised Policy Statement:

In conclusion, removing the income tax allowance will not eviscerate the preferential tax treatment that Congress gave entities engaged in natural resource activities by permitting them to operate as publicly-traded partnerships with pass-through taxation, including the ability to reach a broader base of investors and defer certain tax obligations. Even in the absence of an income tax allowance, the energy sector will benefit from the MLP business form by enabling MLP-owned pipelines to provide lower tariff rates to shippers, including those engaged in production, marketing and refining.³¹

The above quoted text can be paraphrased as three conclusions by the Commission:

- (1) the Revised Policy Statement will not frustrate the intent of Congress in adopting 7704;
- (2) the Revised Policy Statement will not prevent investors from benefitting from MLP investments; and

³¹ Revised Policy Statement at P 41 (citations omitted) (emphasis added).

- (3) the energy sector will benefit from lower transportation tariffs.

Factual developments since March 15, 2018 suggest to us that all three assumptions are unlikely to prove true. Recently, three MLPs have publicly announced conversions or mergers into taxable corporations: Viper Energy Partners, L.P., Legacy Reserves, LP and Tallgrass Energy Partners, L.P. While it is unlikely that these conversions were the result of the Revised Policy Statement, each demonstrates that MLPs can convert into corporations if it is no longer in their financial best interests to remain MLPs. As an organization, we are aware of multiple MLPA members that are considering corporate conversions. As Dominion pointed out in its filing, “over time, pipelines organized as MLPs would become rare or potentially non-existent.”³² Financial analysts agree with this prediction:

- Shneur Gershuni of UBS reported on March 29, 2018, “We have been of the view that there will be more MLPs who contemplate either a C-Corp conversion or ‘ticking the box’ [to be taxed as a corporation] since the FERC announcement. The trend began this week as three MLPs announced corporate conversions.”
- Tom Abrams of Morgan Stanley agreed, reporting on March 23, 2018, “more firms, in order to side step this...unexpected move, may be more motivated to pursue roll up transactions, or ‘check the box elections’ to be treated as C-corps.”
- As Wells Fargo Equity Research reported on March 24, 2018, “The FERC has effectively eliminated the MLP’s cost of capital advantage. Many are calling for the end of the MLP structure... The FERC ruling causes MLPs typically thought of as safest and lowest risk (e.g., regulated natural gas pipelines) to suddenly seem entirely otherwise. You could make the argument that the FERC ruling is almost equivalent to Congress disqualifying a majority of pipelines as qualifying income under the tax code.”

³² *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, Request for Clarification or Rehearing and Expedited Action of Dominion Energy, Inc., Docket No. PL17-1, at 10-11 (filed Mar. 30, 2018). If the Commission fails to clarify the Revised Policy Statement as requested herein, an unintended result of the Commission’s Revised Policy Statement may be to dictate business formations exactly contrary to those expressly created by Congress to encourage investment in energy infrastructure.

Moreover, we believe that all these developments may ultimately threaten the infrastructure development that is vital to the U.S. economy. As Shneur Gershuni of UBS reported on March 20, 2018, “Going forward there is risk that fewer new pipelines will be built due to lower returns absent the tax allowance. Concerns have been raised if this poses a risk to the shale boom.” We cannot predict whether or how many existing MLPs may undertake corporate conversions. Nor can we predict with certainty the impact on future infrastructure development. But we can say, with certainty, that each of those statements by professional equity analysts, as well as feedback from our members, merits a serious examination of the Commission’s conclusions summarized in (1) – (3) above.

- (1) If corporate conversion is pursued by any meaningful number of MLPs with interstate pipelines as predicted by more than one research analyst and evidenced by discussions with our members to date, we believe Congressional intent in adopting Section 7704 will be eviscerated.
- (2) Investors will not benefit and will, in fact, be harmed. Widespread material MLP devaluations as well as acute MLP specific trading losses have cost MLP investors \$14 billion to date. Even worse, in most cases conversions of MLP into corporations are typically fully taxable to investors, despite providing investors no cash consideration, compounding investor losses. Moreover, the rapidity of potential corporate conversions suggests that management teams may not wait for future rate case action, locking in these losses. Collectively, those developments suggest that the likelihood investors will continue to benefit from MLP investments is at risk as a result of the FERC’s actions.
- (3) The energy sector will not benefit. While one could argue that the Revised Policy Statement transfers the benefit of 7704 to shippers rather than the investors (a result we believe subverts the purpose of section 7704), the result may be even worse than that. Corporate conversions result in continued income tax allowance on pipelines like SFPP. Moreover, the Revised Policy Statement and its real life consequences to date suggest that it is not agnostic as to choice of entity, but favors corporations. If MLPs convert to corporations, there is no benefit to shippers in rates due to the MLPs’ loss of an income tax allowance. Moreover, we believe pipeline construction financed by MLPs, which has

fueled the development of hundreds of billions of dollars midstream development over the last two decades, will be significantly adversely affected, denying those same shippers the infrastructure growth on which their businesses rely, and upon which our country is anticipated to need to accommodate current and projected demand. According to an April 2016 INGAA Foundation Study, the US will need over \$500 billion in new energy infrastructure development over the next two decades (North American Midstream Infrastructure Through 2035: Leaning into the Headwinds, prepared by ICF International, April 12, 2016, pg. 8).

In considering the observations above, we have to ask ourselves who will ultimately benefit from the Revised Policy Statement? If corporate conversions continue, not MLPs, not investors, not shippers, and not energy consumers. In this context, we believe the FERC must clarify its policy, particularly in providing MLPs the opportunity to demonstrate their own analysis of the loss of the income tax allowance under *Hope* and in the context of their particular facts.

The Commission simply has not demonstrated that a double recovery will occur with respect to every MLP pipeline for which an income tax allowance is permitted and the DCF analysis is used. Additionally, the Commission did not anticipate the demonstrated market consequences and corporate conversions in response to its Revised Policy Statement. The Commission can address these oversights by clarifying its policy, as requested herein.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, MLPA respectfully requests that the Commission clarify the Revised Policy Statement by finding that whether an MLP or any other partnership form may recover an income tax allowance will be determined on a case-by-case basis.

Respectfully submitted,

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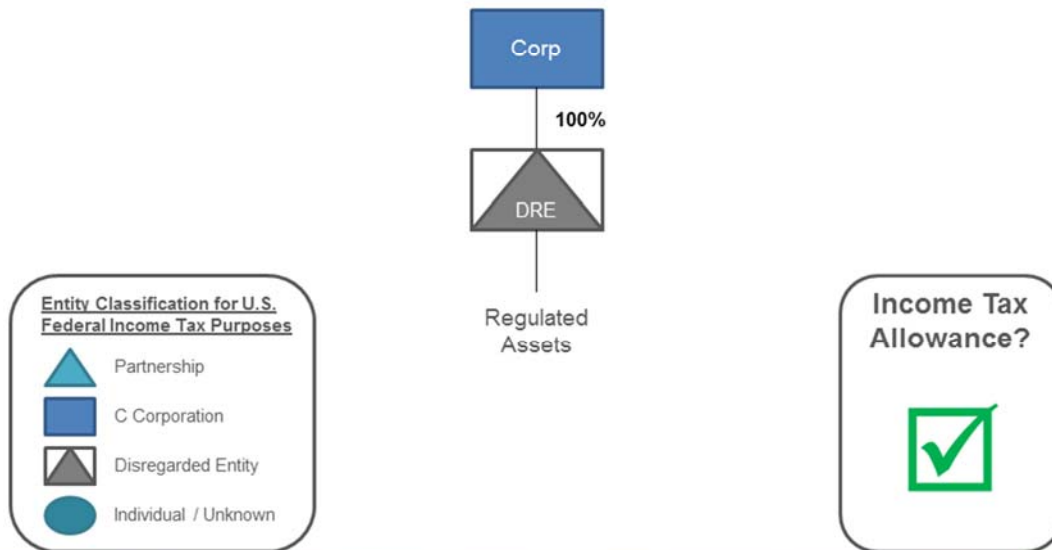
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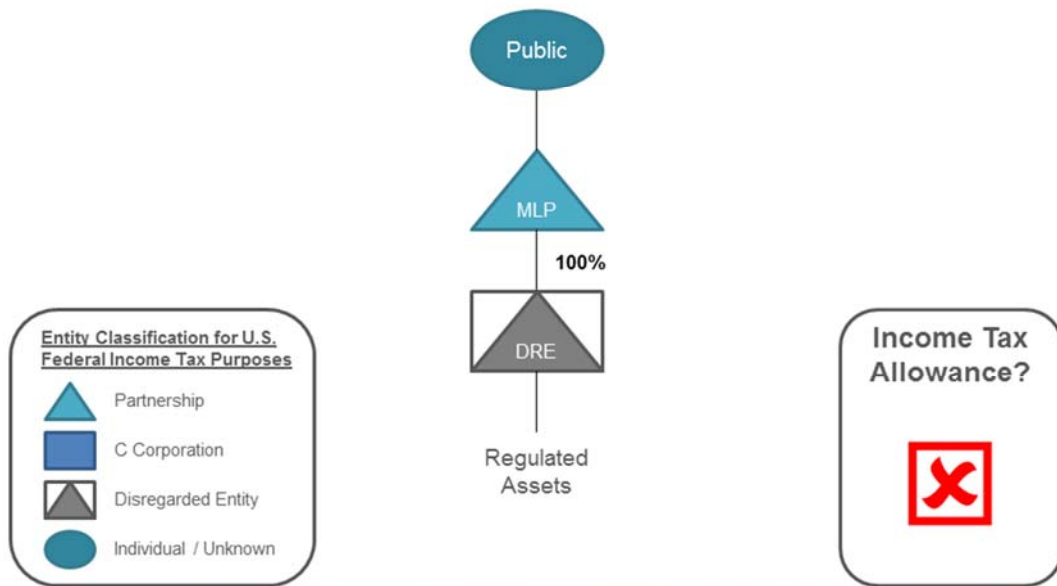
Dated: April 13, 2018

Appendix A

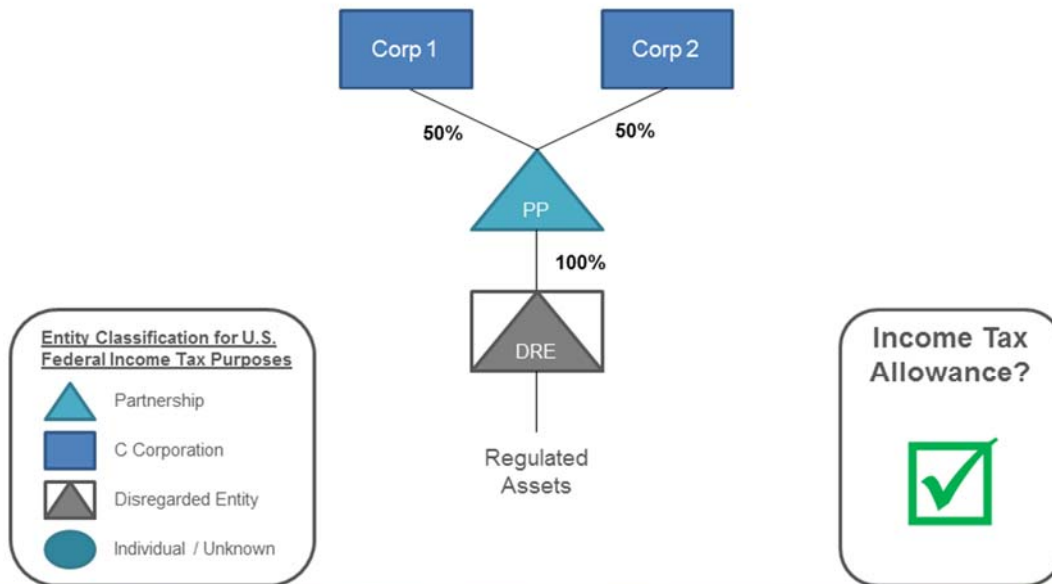
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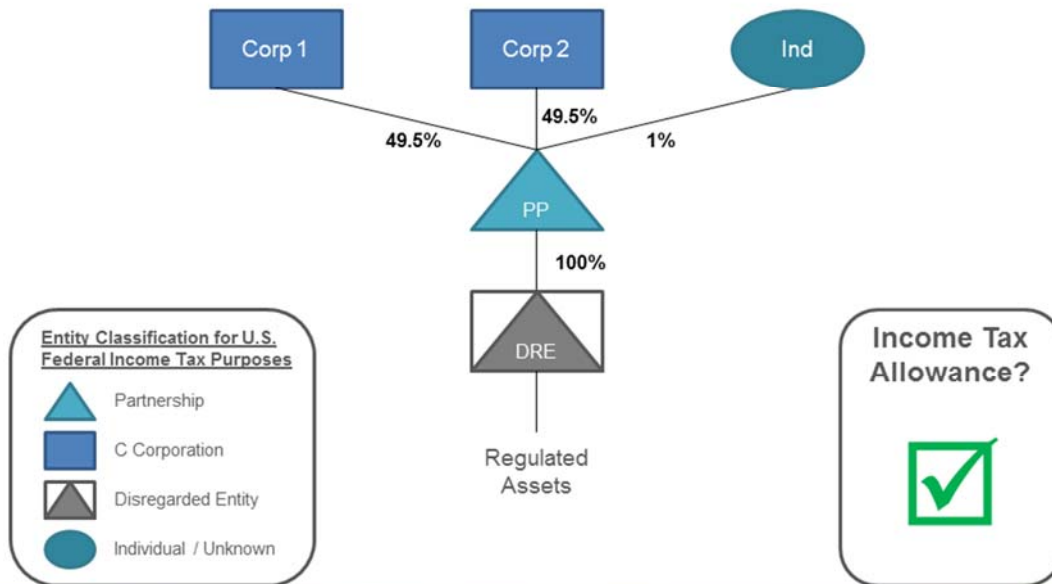
Structure #2: Regulated Assets Owned by MLP, with 100% Public Ownership



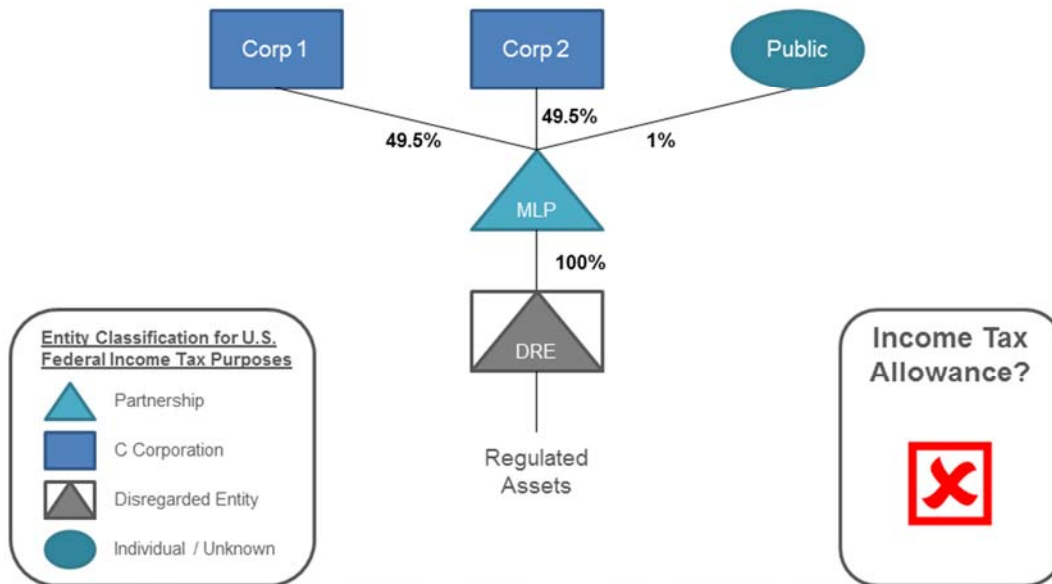
Structure #3: Regulated Assets Owned by Private Partnership of Corporations



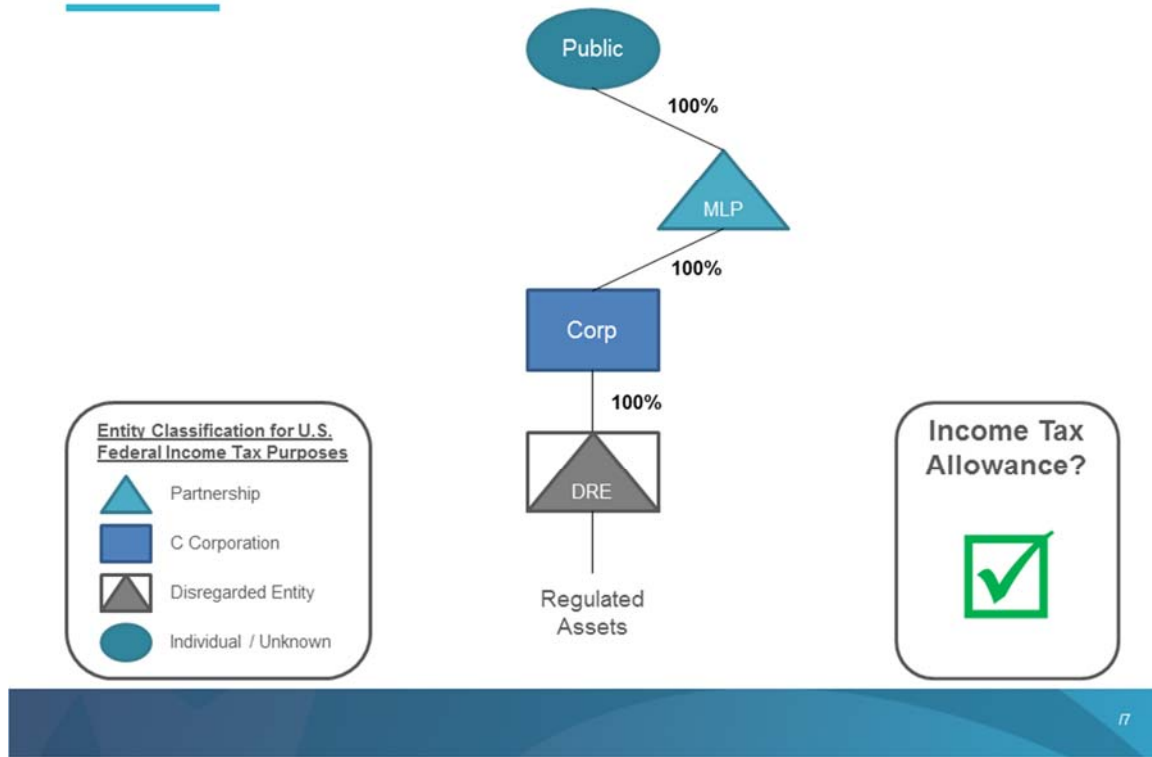
Structure #4: Regulated Assets Owned by Private Partnership of Corporations and an Individual



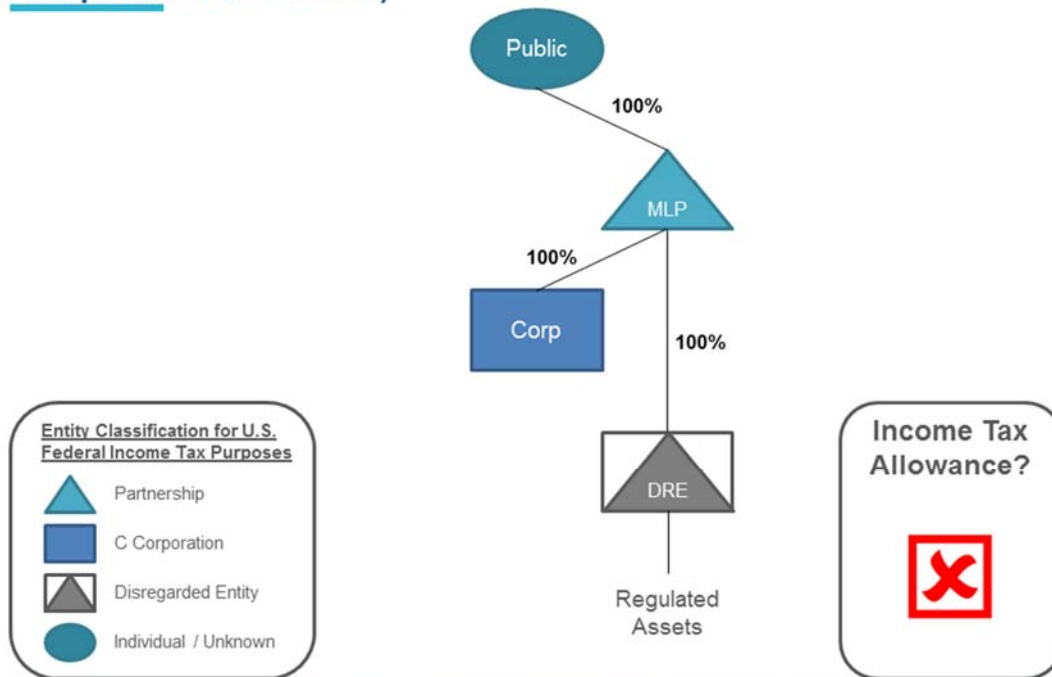
Structure #5: Regulated Assets Owned by MLP, with 1% Public Ownership



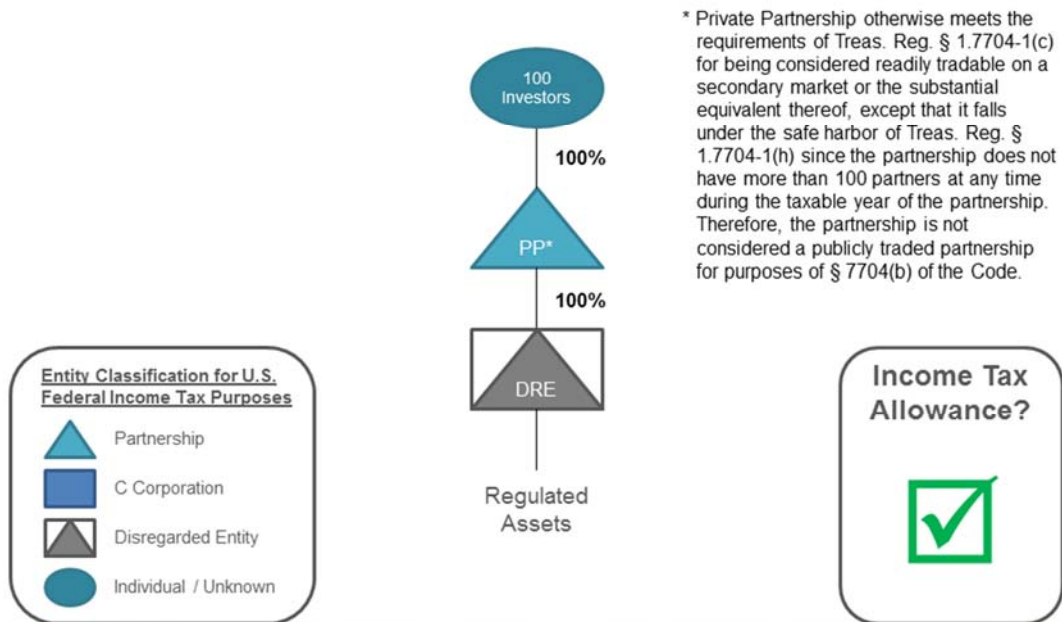
Structure #6: Regulated Assets Owned by Corporation under MLP



Structure #7: Regulated Assets Owned by MLP (versus Corporation under MLP)

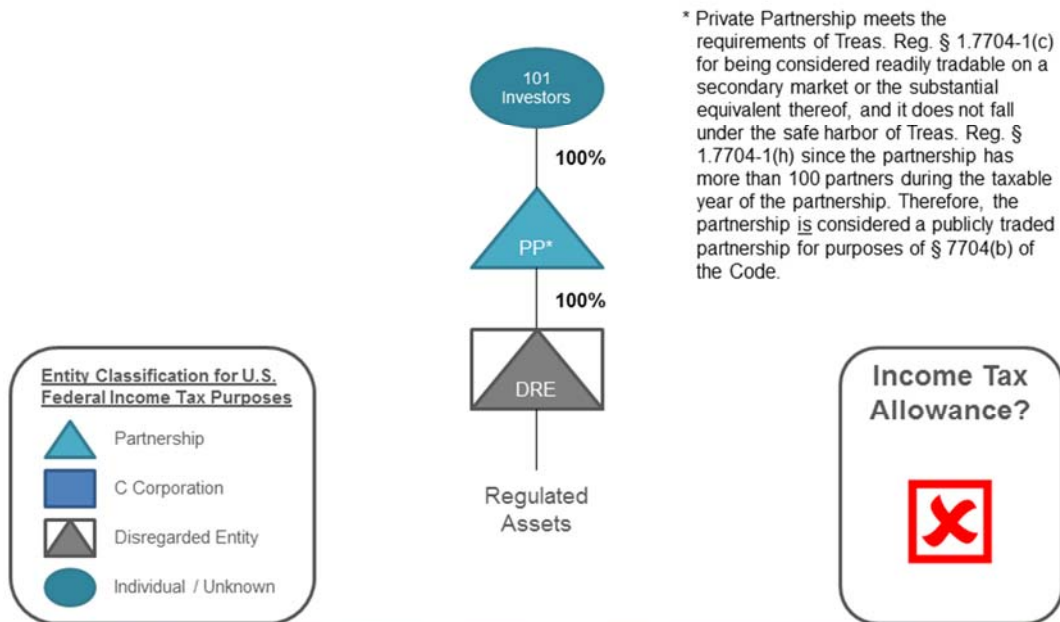


Structure #8: Regulated Assets Owned by Private Partnership* among 100 Investors

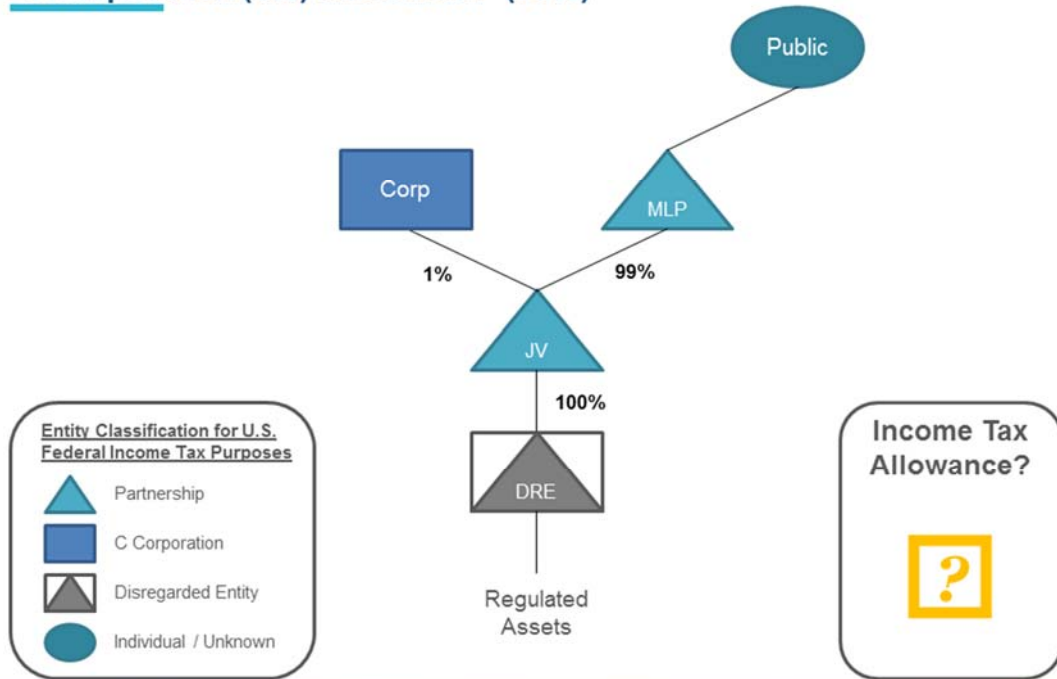


* Private Partnership otherwise meets the requirements of Treas. Reg. § 1.7704-1(c) for being considered readily tradable on a secondary market or the substantial equivalent thereof, except that it falls under the safe harbor of Treas. Reg. § 1.7704-1(h) since the partnership does not have more than 100 partners at any time during the taxable year of the partnership. Therefore, the partnership is not considered a publicly traded partnership for purposes of § 7704(b) of the Code.

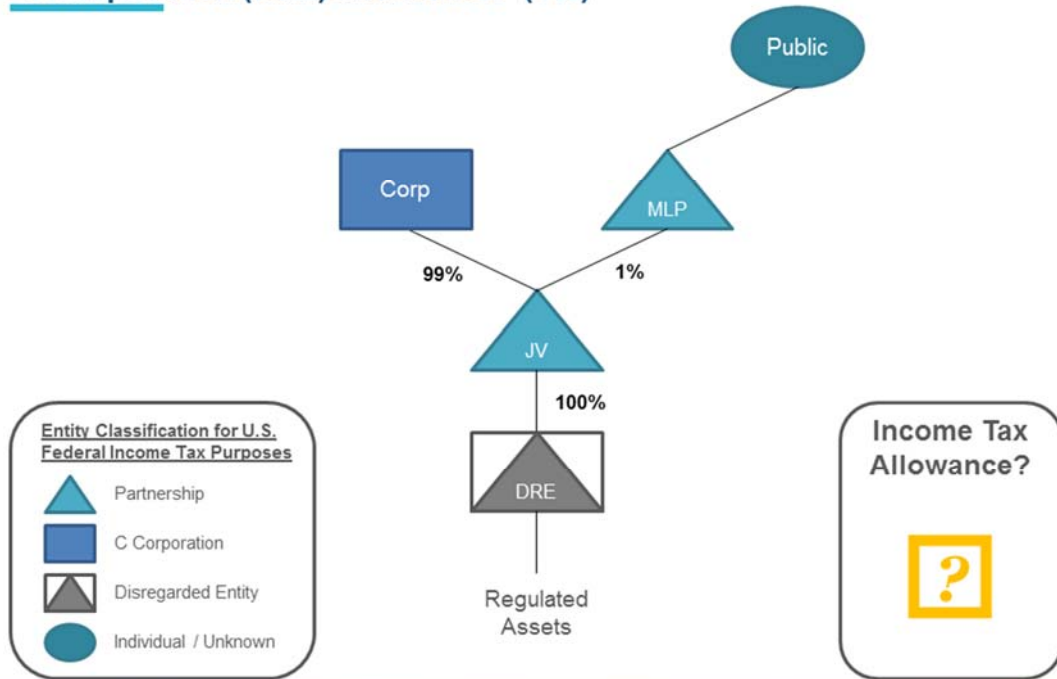
Structure #9: Regulated Assets Owned by Private Partnership* among 101 Investors



**Structure #10: Regulated Assets Owned by Joint Venture between
a Corporation (1%) and an MLP (99%)**

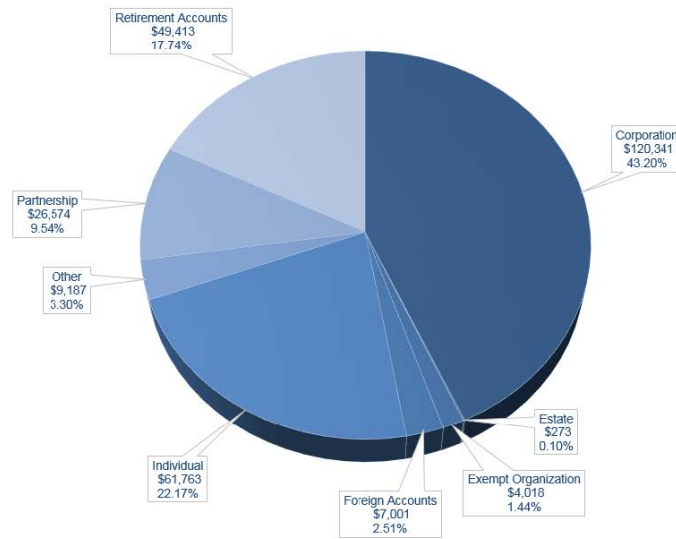


Structure #11: Regulated Assets Owned by Joint Venture between a Corporation (99%) and an MLP (1%)



Appendix B

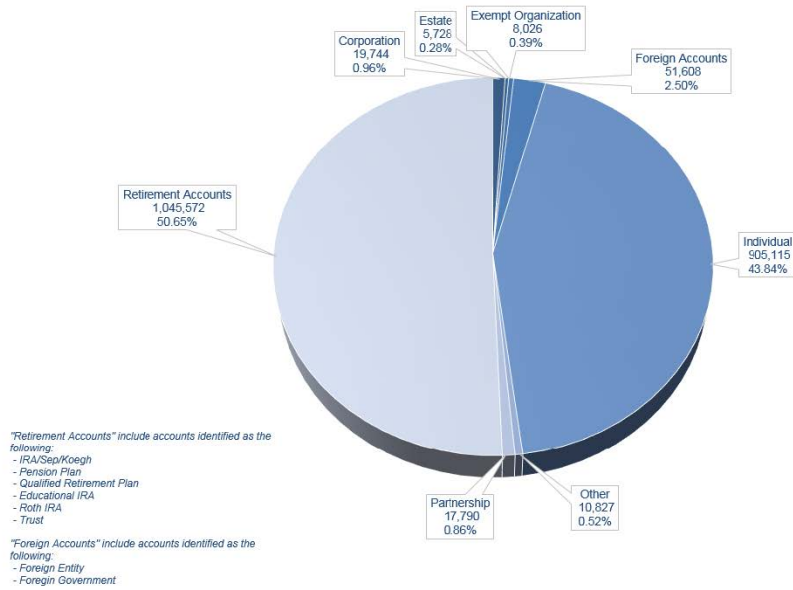
Value of MLP Equity Owned by Entity Type



MLP equity value of \$278.6 million across a sample of 60 MLPs as of December 31, 2017
Data provided by PwC (in \$m)

/1

Number of MLP Investors by Entity Type



3.65 million investments made by over 2 million investors across a sample of 60 MLPs as of December 31, 2017
Data provided by PwC

/2

Appendix C

FERC Announcement – MLP Market Cap. Impact



➤ **AMZ Constituents (42)**

AMZ constituents saw a total market cap loss of **\$13.8 Bn** (~4.40%) by the close of trading on 03/15. The same group has climbed slightly since the fall and currently sits at a total market cap of \$302 Bn, down **\$11.9 Bn** (-3.95%) to date from the date of the announcement

March 15th

- \$13.8 Bn drop from 03/14 close by end of day
- 4.4% drop in one day

03/14 To Date

- \$11.9 Bn drop from 03/14 to date 04/11
- 3.95% fall over ~one month period

➤ **All Energy MLPs (89*)**

The wider universe of energy MLPs suffered a total market cap loss of **\$15.8 Bn** (~4.07%) by trading close on 03/15. To date, since the announcement, this group has continued to fall to \$374 Bn, a drop of 3.70% or **\$14.4 Bn**.

March 15th

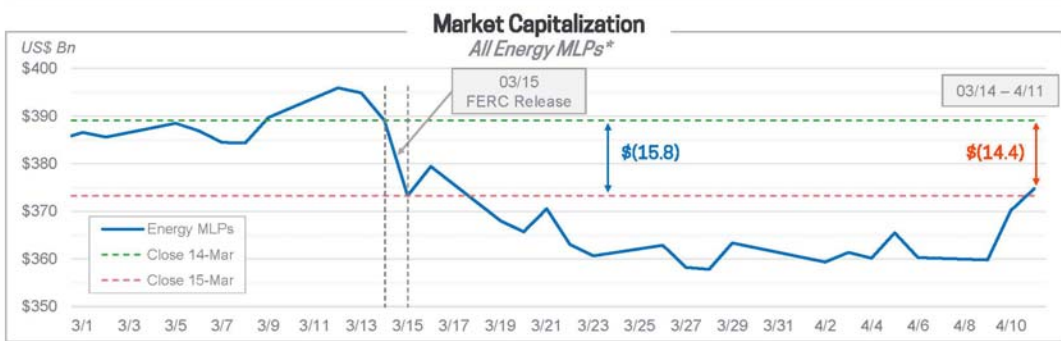
- \$15.8 Bn drop from 03/14 close by end of day
- 4.1% drop in one day

03/14 To Date

- \$14.4 Bn drop from 03/14 to date 04/11
- 3.70% fall over ~one month period

Source: FactSet 04/11/2018
* Excludes MLPs with unit price <\$5.00

FERC Announcement Impact – March 2018



Source: FactSet 04/11/2018
* Excludes MLPs with unit price <\$5.00

Market Cap Impact 1/4



Data arranged by %age market cap change 03/14 to 04/12

#	Ticker	Name	Close 03/14	Close 03/15	%age Change	Close 03/14	Close 04/11	%age Change
1	VNOM	Viper Energy Partners LP	\$2,497	\$2,553	2.2%	\$2,497	\$3,015	20.7%
2	CVRR	CVR Refining LP	\$1,941	\$1,911	-1.5%	\$1,941	\$2,280	17.5%
3	USAC	USA Compression Partners LP	\$1,078	\$1,038	-3.7%	\$1,078	\$1,267	17.5%
4	PAGP	Plains GP Holdings LP Class A	\$3,597	\$3,426	-4.8%	\$3,597	\$3,943	9.6%
5	PAA	Plains All American Pipeline, L.P.	\$16,498	\$15,599	-5.5%	\$16,498	\$17,811	8.0%
6	HMLP	Hoegh LNG Partners LP	\$332	\$330	-0.6%	\$332	\$356	7.1%
7	EVA	Enviva Partners LP	\$375	\$379	1.0%	\$375	\$401	6.9%
8	NRP	Natural Resource Partners L.P.	\$365	\$356	-2.5%	\$365	\$391	6.9%
9	EMES	Emerge Energy Services LP	\$215	\$211	-1.9%	\$215	\$229	6.3%
10	TLP	TransMontaigne Partners L.P.	\$575	\$598	4.0%	\$575	\$610	6.1%
11	DMLP	Dorchester Minerals, L.P.	\$513	\$513	0.0%	\$513	\$544	6.0%
12	SGU	Star Group LP	\$516	\$524	1.6%	\$516	\$542	5.1%
13	APLP	Archrock Partners LP	\$918	\$900	-2.0%	\$918	\$960	4.6%
14	KRP	Kimbell Royalty Partners, LP	\$306	\$305	-0.5%	\$306	\$320	4.4%
15	DLNG	Dynagas LNG Partners LP	\$369	\$364	-1.2%	\$369	\$379	2.8%
16	GEL	Genesis Energy, L.P.	\$2,529	\$2,441	-3.5%	\$2,529	\$2,599	2.8%
17	OMP	Oasis Midstream Partners LP	\$233	\$233	-0.1%	\$233	\$239	2.7%
18	MMLP	Martin Midstream Partners L.P.	\$538	\$523	-2.9%	\$538	\$551	2.5%
19	VLP	Valero Energy Partners LP	\$2,614	\$2,509	-4.0%	\$2,614	\$2,667	2.0%
20	NGL	NGL Energy Partners LP	\$1,368	\$1,290	-5.8%	\$1,368	\$1,392	1.8%
21	NSH	NuStar GP Holdings, LLC	\$498	\$483	-3.0%	\$498	\$507	1.7%
22	BSM	Black Stone Minerals LP	\$1,793	\$1,778	-0.9%	\$1,793	\$1,822	1.6%
23	KNOP	KNOT Offshore Partners LP	\$656	\$656	0.0%	\$656	\$664	1.2%
24	POPE	Pope Resources	\$302	\$308	1.7%	\$302	\$306	1.2%
25	CEQP	Crestwood Equity Partners LP	\$1,927	\$1,881	-2.4%	\$1,927	\$1,948	1.1%

Source: FactSet 04/11/2018
Note: Excludes MLPs with unit price <\$5.00

Market Cap Impact 2/4



Data arranged by %age market cap change 03/14 to 04/12

#	Ticker	Name	Close 03/14	Close 03/15	%age Change	Close 03/14	Close 04/11	%age Change
26	GLOP	GasLog Partners LP	\$1,134	\$1,118	-1.4%	\$1,134	\$1,146	1.0%
27	DKL	Delek Logistics Partners LP	\$699	\$699	0.0%	\$699	\$706	1.0%
28	TEP	Tallgrass Energy Partners LP	\$2,986	\$2,845	-4.7%	\$2,986	\$3,016	1.0%
29	TEGP	Tallgrass Energy GP LP Class A	\$1,171	\$1,103	-5.9%	\$1,171	\$1,181	0.8%
30	CELP	Cypress Energy Partners LP	\$77	\$76	-1.5%	\$77	\$77	0.7%
31	EPD	Enterprise Products Partners L.P.	\$55,389	\$53,898	-2.7%	\$55,389	\$55,735	0.6%
32	EQGP	EQT GP Holdings LP	\$6,242	\$5,989	-4.1%	\$6,242	\$6,279	0.6%
33	ANDX	Andeavor Logistics LP	\$10,083	\$9,679	-4.0%	\$10,083	\$10,137	0.5%
34	TLLP	Andeavor Logistics LP	\$10,083	\$9,679	-4.0%	\$10,083	\$10,137	0.5%
35	AMID	American Midstream Partners, LP	\$601	\$585	-2.6%	\$601	\$603	0.3%
36	TNH	Terra Nitrogen Company, L.P.	\$1,551	\$1,551	0.0%	\$1,551	\$1,553	0.1%
37	SUN	Sunoco LP	\$2,283	\$2,253	-1.3%	\$2,283	\$2,280	-0.1%
38	HESM	Hess Midstream Partners LP	\$532	\$530	-0.3%	\$532	\$530	-0.3%
39	GMLP	Golar LNG Partners LP	\$1,286	\$1,278	-0.7%	\$1,286	\$1,281	-0.4%
40	WLKP	Westlake Chemical Partners LP	\$745	\$741	-0.4%	\$745	\$740	-0.6%
41	CQP	Cheniere Energy Partners, L.P.	\$10,406	\$10,215	-1.8%	\$10,406	\$10,312	-0.9%
42	MMP	Magellan Midstream Partners, L.P.	\$14,538	\$13,977	-3.9%	\$14,538	\$14,395	-1.0%
43	APU	AmeriGas Partners, L.P.	\$3,932	\$3,888	-1.1%	\$3,932	\$3,891	-1.0%
44	CCLP	CSI Compressco LP	\$276	\$275	-0.4%	\$276	\$273	-1.1%
45	PBFX	PBF Logistics LP	\$832	\$813	-2.3%	\$832	\$821	-1.3%
46	CNXC	CONSOL Coal Resources LP	\$232	\$231	-0.7%	\$232	\$229	-1.4%
47	OCIP	OCI Partners LP	\$818	\$822	0.5%	\$818	\$805	-1.6%
48	ETE	Energy Transfer Equity, L.P.	\$16,360	\$15,691	-4.1%	\$16,360	\$16,079	-1.7%
49	DCP	DCP Midstream LP	\$5,284	\$5,083	-3.8%	\$5,284	\$5,173	-2.1%
50	ENBL	Enable Midstream Partners LP	\$6,095	\$5,857	-3.9%	\$6,095	\$5,948	-2.4%

Source: FactSet 04/11/2018
Note: Excludes MLPs with unit price <\$5.00

Market Cap Impact 3/4



Data arranged by %age market cap change 03/14 to 04/12

#	Ticker	Name	Close 03/14	Close 03/15	%age Change	Close 03/14	Close 04/11	%age Change
51	GPP	Green Plains Partners LP	\$286	\$282	-1.7%	\$286	\$278	-2.8%
52	SNMP	Sanchez Midstream Partners LP	\$185	\$179	-3.2%	\$185	\$179	-3.2%
53	ETP	Energy Transfer Partners LP	\$20,627	\$19,334	-6.3%	\$20,627	\$19,951	-3.3%
54	GLP	Global Partners LP	\$573	\$576	0.6%	\$573	\$549	-4.2%
55	PSXP	Phillips 66 Partners LP	\$6,209	\$5,964	-3.9%	\$6,209	\$5,945	-4.2%
56	CNNX	CNX Midstream Partners LP	\$1,204	\$1,209	0.4%	\$1,204	\$1,151	-4.4%
57	ARLP	Alliance Resource Partners, L.P.	\$2,310	\$2,304	-0.3%	\$2,310	\$2,209	-4.4%
58	MPLX	MPLX LP	\$27,551	\$26,852	-2.5%	\$27,551	\$26,297	-4.6%
59	NS	NuStar Energy L.P.	\$2,026	\$1,913	-5.6%	\$2,026	\$1,932	-4.6%
60	SMLP	Summit Midstream Partners LP	\$1,114	\$1,067	-4.3%	\$1,114	\$1,059	-4.9%
61	ENLC	EnLink Midstream LLC	\$2,749	\$2,704	-1.6%	\$2,749	\$2,614	-4.9%
62	WES	Western Gas Partners, LP	\$7,076	\$6,951	-1.8%	\$7,076	\$6,719	-5.0%
63	CINR	Ciner Resources LP	\$565	\$553	-2.1%	\$565	\$536	-5.2%
64	SPH	Suburban Propane Partners, L.P.	\$1,456	\$1,458	0.1%	\$1,456	\$1,378	-5.4%
65	AHGP	Alliance Holdings GP, L.P.	\$1,521	\$1,516	-0.4%	\$1,521	\$1,439	-5.4%
66	TGP	Teekay LNG Partners L.P.	\$1,537	\$1,505	-2.1%	\$1,537	\$1,449	-5.7%
67	HEP	Holly Energy Partners, L.P.	\$3,179	\$3,054	-3.9%	\$3,179	\$2,997	-5.7%
68	AM	Antero Midstream Partners LP	\$5,009	\$4,899	-2.2%	\$5,009	\$4,721	-5.7%
69	EQM	EQT Midstream Partners LP	\$5,074	\$4,853	-4.4%	\$5,074	\$4,777	-5.9%
70	NBLX	Noble Midstream Partners LP	\$1,142	\$1,118	-2.1%	\$1,142	\$1,073	-6.0%
71	BPMP	BP Midstream Partners LP	\$984	\$964	-2.1%	\$984	\$924	-6.1%
72	WPZ	Williams Partners, L.P.	\$35,304	\$33,609	-4.8%	\$35,304	\$33,140	-6.1%
73	BWP	Boardwalk Pipeline Partners, LP	\$2,828	\$2,628	-7.1%	\$2,828	\$2,648	-6.4%
74	ENLK	EnLink Midstream Partners, L.P.	\$5,142	\$4,932	-4.1%	\$5,142	\$4,799	-6.7%
75	USDP	USD Partners LP	\$245	\$240	-2.0%	\$245	\$229	-6.7%

Source: FactSet 04/11/2018
Note: Excludes MLPs with unit price <\$5.00

Market Cap Impact 4/4



Data arranged by %age market cap change 03/14 to 04/12

#	Ticker	Name	Close 03/14	Close 03/15	%age Change	Close 03/14	Close 04/12	%age Change
76	SXCP	SunCoke Energy Partners LP	\$885	\$871	-1.6%	\$885	\$818	-7.6%
77	SRLP	Sprague Resources LP	\$583	\$584	0.2%	\$583	\$539	-7.6%
78	AMGP	Antero Midstream GP LP	\$3,208	\$3,162	-1.5%	\$3,208	\$2,960	-7.7%
79	WGP	Western Gas Equity Partners LP	\$7,779	\$7,628	-1.9%	\$7,779	\$7,168	-7.9%
80	RMP	Rice Midstream Partners LP	\$1,447	\$1,404	-3.0%	\$1,447	\$1,331	-8.0%
81	CLMT	Calumet Specialty Products Partners, L.P.	\$599	\$591	-1.3%	\$599	\$548	-8.5%
82	HCLP	Hi-Crush Partners LP	\$1,132	\$1,096	-3.1%	\$1,132	\$1,029	-9.1%
83	SEP	Spectra Energy Partners, LP	\$19,298	\$17,209	-10.8%	\$19,298	\$16,559	-14.2%
84	SHLX	Shell Midstream Partners LP	\$5,571	\$5,414	-2.8%	\$5,571	\$4,760	-14.5%
85	BPL	Buckeye Partners, L.P.	\$6,855	\$6,468	-5.7%	\$6,855	\$5,808	-15.3%
86	EEP	Enbridge Energy Partners, L.P. Class A	\$4,277	\$3,536	-17.3%	\$4,277	\$3,314	-22.5%
87	TCP	TC PipeLines, LP	\$3,483	\$2,859	-17.9%	\$3,483	\$2,281	-34.5%
88	DM	Dominion Energy Midstream Partners	\$1,726	\$1,634	-5.3%	\$1,726	\$1,030	-40.4%
89	NAP	Navios Maritime Midstream Partners LP	\$178	\$178	0.3%	\$178	\$66	-62.7%

Source: FactSet 04/11/2018
Note: Excludes MLPs with unit price <\$5.00

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 13th day of April, 2018.

/s/ Gia Cribbs
Gia Cribbs