

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

Composition of Proxy Groups)
for Determining Gas and) **Docket No. PL07-2-000**
Oil Pipeline Return on Equity)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF PUBLICLY TRADED PARTNERSHIPS**

The National Association of Publicly Traded Partnerships (“NAPTP”) hereby submits its comments in response to assertions made by certain commentators with regard to the Commission’s July 19, 2007 Proposed Policy Statement in the referenced docket, 120 FERC ¶ 61,068 (2007).

I. The Payment to the General Partner Should be Included in the ROE Calculation

NAPTP in its original comments urged the Commission to consider distribution payments (including the incentive distribution payments) to an MLP’s general partner in the rate making process for an interstate oil or natural gas pipeline so that the returns to all of the partners/investors of the MLP are taken into consideration in the Return on Equity (“ROE”). In the initial comments submitted to the Commission, several commentators have stated reasons why the Commission should not consider this payment. These reasons include: (i) the payment is considered a return of capital or an operating expense and its inclusion in the ROE calculation would be double-counting and (ii) the limited partners make their decision to invest based on the cash to them, not to the cash going to the general partner. We believe that these reasons either are inaccurate or do not adequately consider the full ramifications of distribution payments to an

MLP's general partner, as one of the partners/investors in the overall limited partnership.

Consequently, neither one of these reasons provides a rationale for the Commission to exclude the distribution payments to the MLP's general partner from the ROE analysis.

We agree with the premise that the limited partners make a decision to invest in MLP units primarily based on the cash distributions they are to receive and not on the cash distributions the general partner is to receive. However, the DCF model that is used to ultimately establish the permitted ROE for a pipeline is based solely on the current yield and future growth of the publicly traded MLP units, and therefore only the return to the MLP's limited partners, without considering the return to the MLP's general partner. Consequently, as we stated in our initial comments and discuss below, if the cash distribution payments to the general partner are not taken into consideration in ROE, the limited partners will not receive the appropriate return in relation to the price they pay for the units. Further, because the distribution payments to the general partner are not reflected as an operating expense to the partnership or some other expense or similar item in establishing the revenue requirement for rate making purposes, it not only is not double counted, it is not considered at all.

Most MLPs that are members of the NAPTP have a general partner and limited partners.¹ The limited partners' interests are represented by publicly traded units.² The general partners are (or are owned by) a mix of private or public companies. Currently, there are approximately 32 publicly traded entities that are or that own general partners that are members of the NAPTP (ten of which are organized as limited partnerships themselves). The available cash flow generated

¹ Some members, although referred to as MLPs, are not limited partnerships but publicly traded LLCs. Although they have elected to be taxed as partnerships, they do not have a general partner, and unitholders are members with voting rights, rather than limited partners. These include Copano Energy, LLC; Linn Energy, LLC; and Constellation Energy Partners, LLC.

² Not all limited partnership interests are released to the public markets; for instance, the general partner may also own a limited partner interest.

from the assets owned by an MLP is split between the limited partners and general partner based on a tiered construct provided for in its partnership agreement.³ Available cash flow for MLPs is generally defined as the cash remaining after operating expenses, interest expense, general and administrative expenses and maintenance capital expenditures, but before any payment to the general partner.

In the comments submitted to the Commission, it was argued that the distribution payment to the general partner is an operating expense associated with the management of the MLP assets and therefore including the general partner payment in determining the appropriate return on equity would be double counting. As stated above, the general partner payment is paid from the cash that remains after the operating expenses, interest expenses, general and administrative expenses, and sustaining capital expenditures have been paid. It is not accounted for as an operating expense either under GAAP rules or otherwise in establishing the revenue requirement for rate making purposes, so it would not be double counting to contemplate it in the ROE portion of the rate making process .

As the distribution payment to the general partner is not being considered at all in the rate making process, we believe it should be included in the ROE in the rate making process, otherwise the limited partners will not receive a fair market return. If the distribution is left out of the ROE calculations, the calculations will not allocate enough cash to provide the return to the general partner in addition to providing the return to the limited partners. This cash distribution to the general partner should therefore be included in the ROE analysis for the

³ Note that in several instances, these partnership agreements and the publicly traded MLPs they establish have been around for over a decade. The registration statements and prospectuses of these MLPs disclose the split of the available cash flow between the limited partners and the general partner, and along with the partnership agreements delineating the split, have been available to the public on the Securities and Exchange Commission's EDGAR website (<http://www.sec.gov/edgar.shtml>). Consequently, the calculations to establish the split of the available cash flow between the limited partners and the general partner are and have been available to the general public.

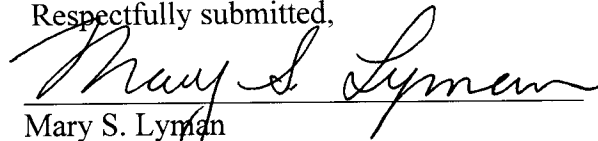
pipeline assets, so that the partnership as a whole will receive enough cash to appropriately pay the cash distributions and the return to the MLP's limited partners and general partner.

Thus, as we stated in our initial comments, if the Commission uses the current yield of an MLP's publicly traded units coupled with the units future growth to establish the appropriate return on equity for all of the investors in the MLP, including the general partner, and applies that return on equity to the pipeline/MLP as a whole, the resulting return, which is to be split between among all of the investors in the MLP, the limited partners will not earn a market rate of return. By way of example, if the Commission determines the ROE for the limited partner is 12% and sets the ROE for the pipeline/MLP at 12%, the limited partner must split the cash generated by that 12% ROE with its general partner and therefore the limited partner will *not* earn a 12% return. It will earn a return less than 12%, and its unit price will suffer as a result.

II. Conclusion

In performing the DCF/ROE analysis, the focus should always be on the return that the investors will require, given the risks involved, to invest in the MLP. In order to provide the unitholder with the expected return, the pipeline must generate a return to the entire partnership that covers the expected return to the limited partners *and* the general partner--that is, all of the investors in the partnership. If it does not, the limited partners will receive less than their expected return, lowering the market price of partnership units. The ROE calculation should be adjusted to take this important fact into account.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary S. Lyman". The signature is written in a cursive style with a horizontal line underneath it.

Mary S. Lyman

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