UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Enable Mississippi River Transmission, LLC	)))	**Docket No. RP18-923-000**

MOTION FOR LEAVE TO INTERVENE OUT OF TIME
AND REQUEST FOR REHEARING
OF THE MASTER LIMITED PARTNERSHIP ASSOCIATION

Pursuant to Rules 212, 214, and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission" or "FERC"),[1] the Master Limited Partnership Association ("MLPA") hereby moves for leave to intervene out-of-time in the above-captioned proceeding and respectfully requests rehearing of the Commission's order issued in the proceeding on July 31, 2018.[2] As further set forth below, MLPA believes the outcome of this proceeding appears likely to extend beyond the pipeline and shippers at issue, with significant implications for master limited partnership ("MLP") pipelines regulated by the Commission. As an association of MLPs, MLPA has unique insight into the history and characteristics of MLPs that is relevant to this proceeding. Based in part on this history and the development of this proceeding, MLPA believes the Commission should grant rehearing as further set forth herein and allow individual MLP pipelines to seek an income tax allowance, with the opportunity to support such request fully and without facing summary disposition based purely on the fact that the pipeline is an MLP or has an MLP in its ownership structure.

In support hereof, MLPA states as follows:

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[1] 18 C.F.R. §§ 385.212, 385.214, 385.713 (2018).
[2] *Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075 (2018) ("MRT Order").

I.
CORRESPONDENCE

The name and mailing address of the person to whom service is to be made and to whom communications are to be addressed in this proceeding is:

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II.
MOTION TO INTERVENE OUT-OF-TIME

The exact legal name of MLPA is the Master Limited Partnership Association. MLPA is a national trade association representing master limited partnerships ("MLPs") and those who work with them. Among the over ninety MLPs that MLPA currently represents, nearly half develop infrastructure for and are engaged in the gathering or transportation of natural gas, natural gas liquids, crude oil, and refined products. For over two decades MLPA has both advocated for and supported the principle that MLPs must be afforded a tax allowance in their costs of service regardless of the extent of corporate ownership. MLPA advocated this position in 1995 under its prior name, Coalition of Publicly Traded Partnerships, in connection with the original *Lakehead* decision,[3] and again in 2005 as part of the proceedings that led to the Commission's 2005 income tax cost recovery policy.[4] MLPA further represented these members by submitting comments and

[3] *Lakehead Pipe Line Co. L.P.*, 75 FERC ¶ 61,181, at 61,594 (1996).
[4] *See Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139, at P 33 (2005) ("2005 Tax Policy Statement").

requests for clarification in the Commission's proceedings related to the Revised Policy Statement, *Inquiry Concerning the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 162 FERC ¶ 61,227 (2018) ("Revised Policy Statement"). MLPA requested clarification regarding the scope of the Commission's Revised Policy Statement and understood the Order on Rehearing issued July 18, 2018,[5] in Docket No. PL17-1, granted the clarification needed. As explained below, however, the Revised Policy Statement and the MRT Order in which the Commission appears to be applying that Revised Policy Statement, now appear to affect MLPA and its members going forward in a manner not evident in the Commission's language in the Order on Rehearing. Accordingly, MLPA has a direct interest in the results of this proceeding and the Commission's interpretation and application of the Revised Policy Statement and Order on Rehearing as it relates to MRT, which application has the potential to create a precedent for other pipelines that are MLPA members. Specifically, the issues presented in this proceeding directly affect the ability of MLPA members to file for and support an income tax allowance in their cost-of-service rate filings. Consequently, MLPA's intervention and participation in this proceeding will be in the public interest and MLPA is not and will not be adequately represented by any other party in this proceeding.

In acting upon a motion to intervene out of time, the Commission may consider whether the movant has good cause for failing to file the motion within the time prescribed, whether granting intervention will result in any disruption of the proceeding, whether the movant's interest is not adequately represented by other parties in the proceeding, and whether there will be any prejudice to, or additional burdens upon, any existing parties.[6] Good cause exists to permit the

[5] *Inquiry Regarding the Commission's Policy for Recovery of Income Taxes*, 164 FERC ¶ 61,030 (2018) ("Order on Rehearing").

[6] 18 C.F.R. § 385.214(d) (2018). *See also Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,311 (2002) (granting motion for late intervention to industry group in a proceeding with industry-wide implications).

late intervention requested by MLPA. MLPA's goal in this proceeding is the same as its goal in Docket No. PL17-1 and the Commission's prior dockets on this issue: to inform the Commission on the history and characteristics of MLPs, why they are an important part of the pipeline industry, and why the income tax allowance is an important factor in MLPs' contributions to energy infrastructure and require thoughtful Commission policy. MLPA supports the development of Commission policies that enable and encourage the purpose of the MLP structure and allow MLPs to provide the value Congress intended. Granting MLPA's request to intervene in this docket will not result in any disruption of the proceeding, nor will it prejudice any party to this proceeding. MLPA will accept the record of this proceeding as the record was developed prior to the filing of the instant pleading. Moreover, the information provided by MLPA is intended to inform the Commission and the parties regarding the nature of MLPs, significant facts related to MLPs, and the effect of the Commission's orders on MLPs. The record would benefit from MLPA's intervention and information provided herein.

Good cause also exists for granting the late intervention in light of the timing of the MRT Order in relation to the Commission's Revised Policy Statement proceeding and Order on Rehearing. Based on the Order on Rehearing, MLPA understood that an MLP pipeline would be permitted to demonstrate and support an income tax allowance in the pipeline's individual cost-of-service rate case. The MRT Order, however, challenges that understanding and, as a result, the nature of each pipeline rate proceeding like this one has taken on additional significance. This proceeding represents the initial application of the Revised Policy Statement to MLPs other than the specific MLP at issue in Opinion 511-C,[7] and accordingly, good cause exists to permit MLPA to intervene and participate in the Commission's further proceedings with respect to these issues

[7] Opinion No. 511-C, *SFPP, L.P.*, 162 FERC ¶ 61,228 (2018).

as applied to Enable Mississippi River Transmission, LLC ("MRT"). MLPA respectfully requests that the Commission grant this motion to intervene out-of-time, permit MLPA to participate in this proceeding with full rights as a party hereto, accept these comments, and grant rehearing of the MRT Order as further requested herein.

III.
BACKGROUND AND EXECUTIVE SUMMARY

On March 15, 2018, the Commission issued the Revised Policy Statement, which reversed the Commission's prior policy on income tax cost recovery established in the 2005 Tax Policy Statement. The Revised Policy Statement was issued following the D.C. Circuit's remand to the Commission in *United Airlines v. FERC*.[8] 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, L.P. to recover an income tax allowance in its cost of service rates and to earn a return on equity pursuant to the discounted cash flow ("DCF") methodology.[9] The D.C. Circuit did *not* conclude that it was impossible for the Commission to provide a "sufficient justification" for the Commission's prior conclusion that there is no double recovery of taxes when partnership pipelines receive a tax allowance in addition to a DCF-based return on equity ("ROE"). The court concluded only that the Commission had not provided such justification in that case. Thus, following the Revised Policy Statement, MLPA and others submitted requests seeking clarification that the facts underlying the Revised Policy Statement and the Commission's concurrently issued Opinion 511-C were specific to the circumstances of one discrete MLP, and that disparate treatment of *all* MLPs relative to non-MLPs was neither intended nor supported by the Revised Policy Statement. Indeed, as demonstrated by MLPA herein and by others in the Revised Policy

[8] *United Airlines, Inc. v. FERC,* 827 F.3d 122, 136-37 (D.C. Cir. 2016).
[9] *Id*. at 126-27, 136.

Statement proceeding, applying the revised income tax cost recovery policy to all entities owned by MLPs is contrary to court precedent[10] and Congressional intent.[11]

In light of these concerns, MLPA requested that the Commission clarify that MLPs may address the question of income tax recovery on a case-by-case basis in individual proceedings. MLPs must be afforded an opportunity to recover the costs of operating a Commission-jurisdictional pipeline – a result required by the Supreme Court in their interpretation of the Natural Gas Act in *Hope*.[12] This necessarily means that MLPs, like other pipelines, must be given the opportunity to fully support a request for an income tax allowance and put forward evidence that the income tax allowance does not result in a double recovery of income tax costs. To allow otherwise would create disparity between MLP pipelines and other pipelines based purely on organizational form – the Commission would be favoring one form over another.

On July 18, 2018, the Commission issued an Order on Rehearing that appeared, in part, to grant the clarification MLPA requested.[13] The Commission acknowledged that the "Revised Policy Statement and the guidance provided" in the Order on Rehearing "do not establish a binding rule, but instead are general expressions of general policy intent designed to provide guidance," and that the Commission "will have to fully support and justify the application of this guidance in individual cases."[14] The Commission had a wealth of information before it in that proceeding, but

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[10] *See supra* notes 23-29 and accompanying text.

[11] *See, e.g.*, Request for Clarification of the Master Limited Partnership Association at 13-16, Docket No. PL17-1-000 (filed Apr. 13, 2018); Request of TransCanada Corporation for Clarification and if Necessary Rehearing at 26-27, Docket No. PL17-1-000 (filed Apr. 16, 2018); *see also* Letter from the Honorable Max Baucus, U.S. Senator, to the Honorable Elizabeth Anne Moler, Chair, Federal Energy Regulatory Commission (Jan. 9, 1996) (available in FERC Docket No. IS92-27-000).

[12] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[13] Order on Rehearing at P 7 (as explained by the Commission, "no entities are aggrieved by the Revised Policy Statement," and the Revised Policy Statement "does not, in and of itself, finally determine the rights and duties of any entities." However, in the very next paragraph of the Order on Rehearing the Commission appears to narrow the scope of arguments available to MLPs, stating that the Commission "declines to reconsider the policy announced in the Revised Policy Statement.").

[14] Order on Rehearing at P 6 (citing *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974)).

declined to reconsider the Revised Policy Statement itself, stating that it "will consider the issues and arguments raised in the rehearing requests in the context of specific cases in which they apply."[15] The Commission then assured pipelines that an "entity such as an MLP will not be precluded in a future proceeding from arguing and providing evidentiary support that it is entitled to an income tax allowance and demonstrating that its recovery of an income tax allowance does not result in a double-recovery of investors' income tax costs."[16]

However, in the MRT Order, the Commission walked back a commitment to case-by-case analyses contained in the Order on Rehearing. On July 31, 2018, the Commission granted summary disposition denying MRT the ability to recover an income tax allowance for that portion of the income tax liability incurred by its MLP-parent's corporate unitholders.[17] The Commission, which previously stated it had the obligation to "fully support and justify" a change in income tax allowance policy, rejected on summary disposition MRT's request for an income tax allowance and precluded MRT from arguing and providing evidentiary support that it is entitled to an income tax allowance and demonstrating that its recovery of an income tax allowance does not result in a double-recovery of investors' income tax costs.[18] Even MRT's largest firm transportation customer and firm storage customer, Spire Missouri Inc., acknowledged that the question of whether MRT should recover an income tax allowance "must be evaluated at hearing."[19] Contrary to FERC's commitment to "fully support and justify" the Revised Policy Statement in individual

[15] Order on Rehearing at P 8.
[16] *Id*.
[17] *Compare MRT Order* at PP 29-40 (summarily dismissing MRT's ability to recover an income tax allowance), *with* Order on Rehearing at P 8 (stating that "While the Commission declines to reconsider the policy announced in the Revised Policy Statement, it will consider the issues and arguments raised in the rehearing requests in the context of specific cases in which they apply. An entity such as an MLP pipeline will not be precluded in a future proceeding from arguing and providing evidentiary support that it is entitled to an income tax allowance and demonstrating that its recovery of an income tax allowance does not result in a double-recovery of investors' income tax costs.").
[18] *Id*.
[19] Motion to Intervene, Protest, Request for Technical Conference, and Request for Maximum Suspension and Hearing of Spire Missouri Inc., Docket No. RP18-923-000 (filed July 11, 2018).

proceedings, and despite the acknowledgment of the MRT's largest shipper that the income tax allowance issue should be resolved at hearing, the Commission granted summary disposition and found that it was MRT's income tax allowance position that was deficient, stating that "MRT has failed to justify the inclusion of an income tax allowance in its cost of service."[20]

The Commission's failure to allow MRT the opportunity to fully support its request for an income tax allowance was in error and the Commission should grant rehearing and permit MRT to proceed to hearing in order to support its request for an income tax allowance. The Commission failed to engage in reasoned decision making in granting summary disposition and denying MRT an income tax allowance, or even an opportunity to support the income tax allowance presented in its filing. Granting rehearing is consistent with the Commission's commitment in the Order on Rehearing in Docket No. PL17-1-001, and more fundamentally, consistent with the Commission's obligation under the Natural Gas Act and Commission and court precedent.[21]

IV.
REQUEST FOR REHEARING

A. Specifications of Error and Statement of Issues

Pursuant to Rule 713(c)(1) and Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,[22] MLPA provides the following Specifications of Errors and Statements of Issues:

1. **The Commission erred by failing to engage in reasoned decision making by unduly discriminating against MLP pipelines by summarily denying MLPs the ability to earn returns sufficient to maintain their credit and attract capital, in violation of the requirements of the Natural Gas Act.** Under the Natural Gas Act, the Commission is obligated to provide pipelines with a reasonable

[20] The Commission's articulation in the Revised Policy Statement proceeding, the *MRT Order*, and a contemporaneous order, *Trailblazer Pipeline Company, LLC*, 164 FERC ¶ 61,074 (2018) ("Trailblazer"), that only MLPs that wholly consolidate with their tax paying parent can recover an income tax allowance represents a misunderstanding of the MLP structure as, to be an MLP, a firm must be publicly traded and thus, by definition cannot be 100% consolidated with a parent.

[21] Granting rehearing also would be more consistent with the Commission *Trailblazer* order issued in Docket No. RP18-922-000, *Trailblazer Pipeline Company, LLC*, 164 FERC ¶ 61,074 (2018).

[22] 18 C.F.R. §§ 385.713(c)(1) and (2).

opportunity to recover costs of providing jurisdictional service, *Hope Nat. Gas Co.*, 320 U.S. at 603, and the Commission is required to provide "parity between equity owners in partnership and corporate pipelines." *United Airlines*, 827 F.3d at 137. Moreover, the returns for regulated entities must "be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital." *Hope Nat. Gas Co.*, 320 U.S. at 603; *see also Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 693 (1923). The Commission's decision to summarily disallow recovery of MLPs' income tax costs through an income tax allowance creates disparity among pipelines by limiting the ability of MLP pipelines to fully argue for and support recovery of the pipelines' cost of service in a rate proceeding, and more broadly precludes the ability of MLP pipelines to propose and support any alternate proposals to allow for recovery of income tax costs to ensure parity with corporate pipelines. Such disparate treatment already has undermined the financial integrity of MLP pipelines and does not reflect reasoned decision making.

2. **The Commission erred by failing to engage in reasoned decision making when it granted summary disposition and rejected MRT's request for an income tax allowance after finding, without sufficient factual examination or analysis that MRT failed to justify the inclusion of an income tax allowance in its cost of service.** As explained by the Commission in the MRT Order, summary disposition is appropriate where the Commission "determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation or Commission policy." MRT Order at P 25. The Commission failed to adequately apply this standard and examine whether material issues of fact were in dispute when it granted summary disposition of the income tax allowance issue. An agency's decision must "examine the relevant data and articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 158 (1962)). The MRT Order at best applies a Revised Policy Statement, which is not binding law, *Order on Rehearing* at P 6, nn.11, 12, to an individual pipeline without fully analyzing that pipeline's specific facts and circumstances, instead closing off the pipeline's opportunity to fully develop record evidence.

3. **The Commission acted arbitrarily and capriciously by departing from prior Commission policy and summary dismissing an MLP's request to receive an income tax allowance without reasoned explanation or sufficient justification.** As explained in the Order on Rehearing, the Revised Policy Statement was not a "binding rule," and it is the Commission's obligation in subsequent proceedings "to fully support and justify the application" of the Revised Policy Statement to an MLP. *Order on Rehearing* at P 6. The explanation of the Commission's implementation of a policy change via the summary disposition granted in the MRT Order falls well short of this requirement and is therefore arbitrary and capricious. *See, e.g., Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (holding that an agency changing its policy must show that there are good reasons for the new policy); *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 657-58 (2007) (holding that the Court would vacate an agency's decision as arbitrary and capricious if the agency's decision "offered an explanation for its decision that runs counter to the evidence before the agency") (internal citation omitted). This is particularly true given the significant policy issues affected by the Commission's application of the Revised Policy Statement. The Commission is "obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress." *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968). The Commission did not adequately explain in the MRT Order its rejection of the important policy reasons underlying its prior policy of permitting an income tax allowance for both corporation-owned and MLP-owned pipelines. "[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious." *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995).

4. **The Commission erred by failing to engage in reasoned decision making in applying the Revised Policy Statement in this proceeding while dismissing requests for rehearing of the Revised Policy Statement, resulting in a binding Commission policy with no opportunity for rehearing.** In the Order on Rehearing, the Commission stated that MLPs would be able to present in individual proceedings all arguments against the Revised Policy Statement in Docket No. PL17-1, and that the Commission itself would be required to support its proposed change in the treatment of income tax allowance costs. This commitment made sense because the Revised Policy Statement should be non-binding and does not itself result in any change to pipelines' income tax cost recovery. *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). On this basis, the Commission *dismissed* requests for rehearing in that docket, casting aside considerable record evidence presented by the industry that the Revised Policy Statement was in error. In the MRT Order, however, the Commission applied the Revised Policy Statement as though it was binding precedent without sufficiently supporting such reversal of prior policy, citing to and relying on the Revised Policy Statement in its Order. The Commission also reversed course on its commitment to support the Revised Policy Statement as it committed to do in the Order on Rehearing, instead granting summary disposition on the question of whether MRT could recover an income tax allowance without adequate fact-finding or reasoned decision making. "An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir. 1970). *See also Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 158 (1962)).

B. **Argument**

1. The Commission erred by unduly discriminating against MLP pipelines, failing to "ensure parity between equity owners in partnership and corporate pipelines" and to allow pipelines a return "sufficient to assure confidence in the financial integrity of the enterprise" based purely on corporate form.

As explained by both the Supreme Court in *Hope* and the D.C. Circuit in *United Airlines*, the Commission, under the Natural Gas Act, is obligated to provide pipelines with a reasonable opportunity to recover costs of providing jurisdictional service[23] and to provide "parity between equity owners in partnership and corporate pipelines."[24] This was the starting point for the *United Airlines* decision itself. The D.C. Circuit in *United Airlines* explained that the Supreme Court "has instructed that 'the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.'"[25] The court stated that, while the Commission may have a justifiable basis for its ratemaking policy, the Commission nevertheless has an "obligation to ensure 'commensurate . . . returns on investments' for 'equity owner[s]' as required under Hope Natural Gas," and "must still ensure parity between equity owners in partnership and corporate pipelines."[26] The D.C. Circuit in *United Airlines*, citing the Supreme Court's *Hope* precedent, identified the potential for "inequitable returns for partners in those [partnership] pipelines as compared to shareholders in corporate pipelines" and found that since the Commission's income tax cost recovery policy potentially resulted in such inequitable returns, the Commission had "not shown that the resulting rates under FERC's current policy are 'just and reasonable.'"[27] The court therefore remanded the issue to the Commission to consider mechanisms

[23] *Hope Nat. Gas Co.*, 320 U.S. at 603.
[24] *United Airlines, Inc.*, 827 F.3d at 137.
[25] *Id.* at 128 (citing *Hope Nat. Gas Co.*, 320 U.S. at 603).
[26] *Id.* at 137.
[27] *Id.* at 136 (citing *Hope Nat. Gas Co.*, 320 U.S. at 603).

for which it could demonstrate that partnership pipelines do not "double recover" income taxes[28] and therefore receive a return disparate from other Commission-regulated pipelines.

Undoubtedly, the Commission's regulatory charge under the Natural Gas Act "involves a balancing of the investor and consumer interests,"[29] which means that while pipelines are not guaranteed net revenues, pipelines must be allowed the opportunity to recover their costs and earn a return "commensurate with returns on investments in other enterprises having corresponding risks."[30] The pipeline's return should be "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[31] A policy that fails to ensure parity between owners of partnership and corporate pipelines would undermine the "confidence in the financial integrity" of the disparately treated enterprise and inhibit the ability of the pipeline to "maintain its credit and to attract capital."

In order to avoid unduly discriminatory treatment among Commission-regulated pipelines, at a minimum the Commission must provide each pipeline the opportunity to argue for and receive an income tax allowance on a case-by-case basis, and that opportunity must be more than illusory, as initially promised in the Order on Rehearing.[32] The MRT Order suggests that MLPs will not be afforded that opportunity. As explained further below, a number of critical facts suitable for exploration at hearing were ignored and not evaluated by the Commission when it granted summary disposition and rejected MRT's request for an income tax allowance. As demonstrated by *Trailblazer*, issued the very same day, the Commission arrives at a different result for pass-through entities that are not MLPs. This disparate treatment is tied, if at all, to an economic theory

[28] *Id.* at 137.
[29] *Hope Nat. Gas Co.*, 320 U.S. at 603.
[30] *Id.*
[31] *Id.*
[32] Order on Rehearing at P 8.

of double recovery that MLPs have consistently noted is flawed and, if applicable at all, applies only to a limited subset of the diverse group of MLPs that exist. The Commission failed to explore any of these issues or provide justification for its decision to deny MRT specifically an income tax allowance. The conclusion reached by the Commission relied purely on organizational form of MRT's parent entity, disparately treating MLPs, C-corporations, and other organizational forms without justification. However, as shown in Exhibit C hereto, there are a number of pass-through structures potentially affected by the Revised Policy Statement and MRT Order (and Exhibit C reflects only a small portion of the possible structures). A one-size-fits-all approach is not just and reasonable and does not reflect reasoned decision making.

Evidence of the disparity resulting from the Commission's application of the Revised Policy Statement is immediately visible in the market's reaction to the Commission's recent orders on income tax allowance,[33] as well as decisions being implemented by pipelines themselves. The Revised Policy Statement has set in motion a process by which all pipelines with FERC cost-of-service rates, regardless of their current tax classification, could eventually receive an equivalent income tax recovery by pursuing a conversion to corporate form. Multiple MLPs that own FERC-regulated pipelines with cost-of-service rates have announced or completed plans to elect to be taxed as C-corporations for U.S. federal income tax purposes in order to recover a corporation-equivalent income tax allowance in their cost of service. If the DCF methodology for calculating an ROE for MLPs did in fact recover income tax costs (i.e., if there was a "double recovery" from the combination of the DCF-based return and an income tax allowance), these conversions to C-

[33] *See, e.g.*, Request for Clarification of the Master Limited Partnership Assoc., Docket No. PL17-1-000, at p. 11-16 (filed Apr. 13, 2018); *see supra* note 32. As MLPA previously noted in Docket No. PL17-1-000, 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. 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. *See* Exhibit D.

corporations would not be necessary. The conversions are necessary precisely because the Revised Policy Statement created a disparity that the market itself is attempting to address, but as discussed below this Commission-induced shift toward C-corporations is contrary to Congressional intent and circumvents Congress' tax policy. Thus, the Commission is effectively, unjustly, and unreasonably mandating that cost-of-service pipelines become C-corporations by economically *penalizing* the choice of partnership form.

The election by MLPs to be taxed as C-corporations will not lead to any permanent reduction in tariff rates for shippers. On the contrary, when an MLP pipeline becomes a C-corporation pipeline, its income tax allowance will reset in the next rate case to be equal to that of a C-corporation pipeline, and tariff rates will adjust accordingly. Furthermore, if MLPs convert to C-corporations in order to get a corporate-equivalent income tax allowance, costs to investors are likely to be extensive, having cascading effects on infrastructure investment and development. When an investor surrenders an MLP unit for a share of common stock, it typically triggers taxable gain to the investor. Moreover, these conversions undermine the generally held belief that energy infrastructure is a safe place to invest retirement savings.[34] By fundamentally reshaping the image of energy investment, these taxable conversions of MLPs to C-corporations will increase the cost of capital for infrastructure projects in general. Accordingly, the Revised Policy Statement will fail "to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[35]

The demonstrated market consequences of the Revised Policy Statement as applied in the MRT Order and the recent and potential corporate conversions reflect that the Commission's

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[34] *See* Exhibit B (showing the level of investment in MLPs by Entity Type, with substantial investment by retirement accounts).
[35] *Hope Nat. Gas Co.*, 320 U.S. at 603.

denial of an income tax allowance to all MLPs has and will deter investment. As recently as August 28, 2018, Ethan Bellamy, a midstream energy analyst at Robert W. Baird & Co. Inc., was quoted by S&P Global Market Intelligence as saying "If someone had asked me to craft a plan to disrupt the financing of critical national infrastructure, I could not have done a better job.[36] 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 cannot be considered just and reasonable. The Commission should grant rehearing to allow MRT, and other pipelines with MLP ownership filing rate cases in the future, the opportunity to propose cost-of-service rates that ensure parity with other corporate forms and commit that the Commission will provide a bona fide opportunity for MLPs to support an income tax allowance, or to otherwise provide such parity between MLPs, other pass-through entities, and C-corporations. Failure to ensure this parity is likely to result in a change of corporate form with no benefit to ratepayers or pipelines.

Whether similar to MRT's proposal to recover an income tax allowance for the income tax liability incurred by its MLP-parent's corporate unitholders, or alternate proposals necessary to maintain parity among pipelines, the Commission should permit pipelines owned by MLPs to file and support proposals for an income tax allowance that better align with Congressional intent by maintaining the benefits of the MLP structure and providing the proper incentives to continue investment in infrastructure development, while also ensuring parity between pipelines regulated by the Commission. While a number of options may exist to achieve these goals, MLPA respectfully submits one example of an approach that pipelines owned by MLPs should be permitted to propose to solve the income tax allowance issues created by the Revised Policy

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[36] Five Months Later, Group of MLP Stocks Struggle to Recover from FERC Tax Ruling, Allison Good, S&P Global Market Intelligence (August 28, 2018).

Statement. The Commission would satisfy its obligations under the Natural Gas Act and ensure parity among regulated entities by allowing pipelines owned by MLPs and corporations to recover the same federal income taxes (i.e., 21 percent) in their cost of service. This approach results in the two ownership models being placed on equal footing vis-à-vis shippers, preserving Congress' long-held and recently reaffirmed policy of incentivizing energy development through the MLP structure. This approach assumes that the DCF ROE component of the cost of service calculation, which MLPA understands to be based on empirical market data and not any component of tax liability or MLP sponsor's tax liability, would be left unchanged. By allowing all entities the option, regardless of their tax classification, to recover the same income tax allowance in their cost of service based on the same rate, taxes are taken out of the equation in terms of choice of entity.[37] Such proposals address the Commission's overarching goals while ensuring parity among pipelines and protecting investor and shipper interests. To the extent factual disputes exist regarding the appropriate parity measures, those are appropriately resolved in a hearing, not through inadequate findings in support of summary disposition.

2. The Commission failed to engage in reasoned decision making when it granted summary disposition and rejected MRT's request for an income tax allowance after finding, without sufficient factual examination or analysis, that MRT failed to justify the inclusion of an income tax allowance in its cost of service.

The Revised Policy Statement, as the Commission appears to be implementing it in the MRT Order, results in disparate treatment of pipelines owned by MLPs vis-à-vis pipelines owned by C-corporations based purely on choice of legal form. The Commission "will have to fully support and justify the application" of the Revised Policy Statement in individual cases.[38] Given

[37] While MLPA does not have clarity regarding FERC's approach to any adjustment to index-based rates as a result of the Revised Policy Statement, MLPA strongly encourages the Commission to ensure that any such adjustment also provide parity with respect to the choice of business form in order to preserve Congressional intent.
[38] *Id*. at P 6.

the nuanced nature of the issues involved in determining whether a pipeline should be permitted to include an income tax allowance in its cost of service, this requirement means the Commission must undertake a thorough analysis of the facts applicable to each pipeline and allow the pipeline and its shippers the opportunity to explore those facts in an evidentiary hearing. Evaluation of whether specific income tax costs include or do not include "double recovered" income taxes is a factual question and not a matter that lends itself to summary disposition.[39] The Commission should permit, in each proceeding, entities owned by MLPs and shippers the opportunity to submit and fully support all arguments related to the Revised Policy Statement, and pipelines should be granted a bona fide opportunity to demonstrate their eligibility for an income tax allowance.

Contrary to the requirements of reasoned decision making and its commitment in the Order on Rehearing, the Commission has failed to justify its decision, as it appears to have taken in the MRT Order, to bar all MLPs, regardless of structure, from seeking to recover an income tax allowance. The Commission has not analyzed 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)[40] as well as a variety of subsidiaries and investments (also including corporations). The Commission's failure to distinguish amongst the various MLP structures for purposes of permitting an MLP to seek recovery of an income tax allowance is not just or reasonable decision making. The Commission also has not explored a number of issues that bear directly on the double-recovery question and whether MRT or other pipelines with MLP ownership should

[39] Summary disposition is appropriate where the Commission "determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation or Commission policy." *MRT Order* at P 25.

[40] A survey of 60 MLPs indicates that corporations own 43.2% of such MLPs equity by value.

recover an income tax allowance. What constitutes an "MLP" in the context of MRT or any entity other than SFPP, L.P., and what are all the attributes of that form of entity that are relevant to whether an income tax allowance should be recovered? What does the "double recovery" theory purport to prove, and what (or whose) income tax costs are supposed to be recovered through the return on equity? Is the assumption that or theory by which those costs are recovered supported by sufficient data (other than stale data at issue in Opinion No. 511-C)? Are the income tax costs that are supposed to be demanded by investors adequate compensation for the income tax costs of a corporate shareholder, specifically a corporate sponsor that did not negotiate a return on equity for its specific units? And are any of those costs reflected in the specific income tax allowance included in MRT's filing? These are questions that could and should be raised in individual proceedings, but that the Commission has foreclosed by granting summary disposition in the MRT Order.

The MRT Order lacks sufficient justification for ignoring these questions and 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 partnerships. MLPA submits that a private partnership with 100 investors (Exhibit C, 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. Prior to the MRT Order at least, presumably because it is not a publicly traded MLP, the "double recovery" theory applied in Opinion No. 511-C would not apply and 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 (Exhibit C, slide 9), the pipeline would be owned by a private partnership among 101 investors, and would then be considered publicly traded. This contrast aptly illustrates why the Commission should not grant summary disposition and find that an entire category of partnerships is not eligible to seek recovery of an income tax allowance. Individual, case-by-case analysis is required.

Given the paucity of discussion or analysis as to why MRT specifically should not be permitted an income tax allowance, it appears reasonable to conclude that no MLP can receive an income tax allowance, particularly if it will not be permitted to support one in a Commission proceeding – an outcome completely at odds with any reasonable interpretation of the Order on Rehearing issued July 18, 2018. The Commission's handful of cursory paragraphs in the MRT Order falls far short of an adequate analysis of an MLP pipeline's structure and the relationship to the supposed "double recovery" to constitute reasoned decision making. MRT may well have successfully demonstrated through its submissions in this proceeding that no double recovery occurs. But on the basis of a separate, "non-binding" policy statement that the Commission itself conceded would require separate support and justification, and on a limited record applicable to one other MLP entity easily differentiated from MRT, the Commission appears to have established a binding policy prohibiting MLPs from recovering an income tax allowance. The Commission should grant rehearing and allow MRT to proceed to hearing to explore the pipeline-specific, fact-intensive details that bear directly on whether an income tax allowance is appropriate for MRT, as the Commission committed to do in the Order on Rehearing.

3. *<u>The Revised Policy Statement as applied arbitrarily and capriciously departs from prior Commission policy, failing to provide any reasoned explanation or sufficient justification for its reversal or the resulting disparate treatment of MLPs and other organizational forms, contrary to Congress' intent to maintain the tax benefits of the partnership structure.</u>*

The Commission, to the extent it precludes any effort by MLPs to recover income tax costs or obtain parity with pipelines organized in other corporate forms, eliminates the tax benefit of the partnership structure for cost-of-service assets and fails to provide any justification for why MRT or other MLPs should not recover an income tax allowance. The Commission failed to fully support this position, as it acknowledged it must. Instead, the Commission cited to Opinion No. 511-C and the Revised Policy Statement itself for a "finding that permitting an MLP pipeline to recover both an income tax allowance and an ROE determined by the DCF methodology results in a double recovery of investors' tax costs."[41] This directly contradicts the Commission's statement that the cited Revised Policy Statement is not binding on any pipeline and that pipelines "will be afforded" the opportunity "to challenge or support the revised policies through factual or legal presentation and to present any issues and arguments regarding the application of these policies to the entities at issue as may be appropriate in the circumstances presented."[42]

The Commission failed to support its decision to single out MLPs for disallowance of income tax costs in a cost of service without reviewing the specific facts of each MLP in individual proceedings to determine the extent, if any, of double recovery. Failure to support such a determination on a case-by-case basis is unjust and unreasonable, and the blanket policy it implies is arbitrary and capricious and not supported by reasoned decision making. Not only did the Commission dispense with critical factual questions and a complex economic and tax issue summarily, in so doing it also created disparity among organizational forms without a reasoned basis for doing so. This disparity reverses the Commission's prior policy and contradicts significant policy justifications favoring parity among MLPs and other organizational forms as demonstrated in the clear expression of Congressional intent last year in the Tax Cuts and Jobs Act to continue to utilize the MLP structure to foster infrastructure development in the energy sector.

[41] *MRT Order* at P 31.
[42] *Order on Rehearing* at P 6.

With respect to the policy implications ignored by the Commission and swept into the summary disposition in the MRT Order, as an initial matter, the tax benefit Congress affords to partnerships does not mean partnership pipelines incur no tax liability. Income taxes are paid by the partners in a partnership pipeline, and MLPs generally require that all MLP unitholders must themselves be U.S. taxpaying entities. Rather, the tax benefit afforded MLPs is a policy choice by Congress to allow pipelines and other companies structured as natural-resource MLPs to avoid double taxation—the pipeline's income is taxed once when allocated to partners rather than being taxed twice through C-corporations (once when allocated to a C-corporation and again when passed to the C-corporation's shareholders). It is what happens after the pipeline's income is taxed, and the rate at which it is taxed, that provides the incentive intended by Congress. Congress made the policy choice to forgo the additional tax revenue to the U.S. Treasury in order to encourage investors to invest in natural resource infrastructure, including pipelines, through the MLP structure.

As previously explained by MLPA and others, and as emphasized below, Congressional intent to encourage the use of the MLP structure was recently reaffirmed. This recent emphasis on the value of MLPs is of critical importance and should be considered when evaluating the disparate effects of the Commission's Order on Rehearing and the recent Order in these proceedings. Without course correction by the Commission, the Revised Policy Statement will upend Congress' intended policy by removing the tax-based benefit to the MLP structure for cost-of-service assets, resulting either in the conversion of MLPs to C-corporations, effectively frustrating the MLP incentive, or passing the effect of lower U.S. Treasury revenue on to shippers via lower pipeline transportation rates with MLPs left paying taxes not otherwise recovered.[43] In either case, the effect of the Revised Policy Statement would be to undermine Congressional intent.

a. Congress recently reaffirmed its MLP policy.

Under U.S. federal income tax rules, partnerships are not subject to entity-level tax. Instead, the partners pay tax on items of income or gain recognized by the partnership as if such items had been realized by the partners directly. In contrast, corporations are subject to entity-level taxation, and corporate shareholders generally are subject to a second level of tax on dividends paid by the corporation. Prior to tax reform in 2017 (the Tax Cuts and Jobs Act, or "TCJA"), because of this corporate "double tax," a taxable U.S. individual was often better off investing in an asset through a partnership, rather than through a corporation.

For example, under the federal income tax rates in effect in 2017, if a taxable individual owned 10 percent of a partnership that owned an asset that generated $1,000 of net income, the individual would have paid tax at a maximum rate of 39.6 percent on his $100 share of such income ($39.60). If the same individual owned 10 percent of a corporation that owned an asset that generated $1,000 of net income, the corporation would have paid tax at a maximum rate of 35 percent ($350). If the corporation made a pro rata distribution of the remaining $650, the investor receiving $65 generally would have paid tax at a 20-percent rate ($13). Total taxes on the corporate shareholder's $100 share of the income would have been $48. Thus, owning the asset through the partnership rather than a corporation resulted in a Congressionally intended tax break of $8.40 – an infrastructure incentive policy paid for by Congress through reduced U.S. Treasury tax revenue.

[43] As noted above, the idea that "double recovery" occurs through the DCF-based ROE is undermined by the conversion of MLPs to C-corporations, and may be further rebutted, if allowed by the Commission, in individual proceedings where pipelines can demonstrate that no double recovery occurs.

In 1987, in order to protect the corporate tax base, Congress strictly limited the ability of publicly traded entities to be treated as partnerships for tax purposes. In fact, as a general rule a publicly traded partnership is taxed as a corporation and subject to two levels of tax.[44] However, Congress permitted certain publicly traded partnerships to continue to be taxed on a pass-through basis, provided at least 90 percent of the partnership's annual gross income is from qualifying sources. In general, the only active business income that is from a qualifying source is income attributable to natural-resource businesses, i.e., "income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource."[45] The purpose of this narrow carve-out was clear at the time and remains relevant today. As the Assistant Secretary for Tax Policy stated in testimony before the House Ways and Means and Senate Finance Committees in 1987, "[g]iven the importance of natural resource development to the nation's security, Congress should consider carefully whether such traditionally non-corporate activities should be subjected to corporate level tax."[46] Following that advice, Congress carefully considered the nation's energy security and allowed natural-resource MLPs, including pipeline MLPs, to benefit from a narrow tax incentive, which was denied to virtually every other type of business.

For the 30 years between 1987 and 2017, MLPs have been a critical financing vehicle for the nation's energy infrastructure. By fine-tuning the definition of qualifying income in section 7704, Congress and the Department of the Treasury have been able to adjust and target the

[44] *See* I.R.C. § 7704(a) (2012) (providing as a general rule that a "publicly traded partnership shall be taxed as a corporation").
[45] I.R.C. § 7704(d)(1)(E) (2012).
[46] *See* Written Statement of the National Association of Publicly Traded Partnerships, Submitted for the Senate Committee on Finance Hearing on Tax Reform, August 1, 2012, available at: http://www.mlpassociation.org/wp-content/uploads/2015/07/NAPTP_Taxation_of_-Business_Entities_FINAL-1.pdf.

investment incentive it provides. In connection with the recently passed TCJA, Congress again took affirmative steps to preserve a tax benefit for MLPs even as other significant tax expenditures, such as the mortgage interest deduction and the deduction for State and local income taxes, were curtailed or eliminated to manage the cost of reform.

In general, the TCJA reduced the top corporate rate from 35 percent to 21 percent and the top individual rate from 39.6 percent to 37 percent, exclusive of the Affordable Care Act surcharge. This change in the rates generally eliminated the tax rate benefit previously enjoyed by a business operating as a partnership. Consider again the example set forth above. Under the new rates, the 10-percent partner in a partnership that earns $1,000 pays $37 of tax on his 10-percent share of the income. In the case of a corporation that earns the same $1,000 of income, the corporate tax is now $210, which leaves $790 to be paid to shareholders as a dividend. A shareholder receiving a $79 dividend still generally pays tax at a 20-percent rate on the dividend (i.e., $15.80), meaning that the shareholder's total tax on $100 earned through the corporation is $36.80 (i.e., $0.20 less than what is paid on the same income earned directly or through a partnership).

In order to preserve some tax benefit for partnerships, Congress created a new provision, section 199A, which allows persons other than corporations to deduct 20 percent of their combined qualified business income.[47] For partners in partnerships that earn income that is eligible for the section 199A deduction, the provision preserves much of the benefit that was enjoyed prior to TCJA. For example, a 10-percent partner in a partnership that earns $1,000 of qualified business income is entitled to deduct 20 percent of their $100 share of the income. After taking the deduction of $20, the partner then pays tax on the remaining $80 at normal rates. Assuming the partner pays tax at the highest marginal rate (37 percent), total tax of $29.60 is due. The difference

[47] Unless extended, section 199A will not apply to taxable years beginning after December 31, 2025.

between the $29.60 of tax paid by the partner eligible for the section 199A deduction and the $36.80 of tax paid by the similarly situated corporate shareholder is $7.20 (i.e., most of the $8.40 of relative benefit enjoyed by the partner in the partnership pre-TCJA is preserved as a result of the 199A deduction).[48]

In order to limit the revenue cost of section 199A, Congress enacted several restrictions on the deduction, most notably in the case of a partnership, limiting it to 50 percent of the partner's allocable share of wages paid to employees of the partnership.[49] Simultaneously, Congress took steps to ensure that MLPs could get the benefit of the 199A deduction, regardless of their employee wage base.[50] In the case of an MLP, 20 percent of "qualified publicly traded partnership income" is deductible even if the MLP pays no employee wages.[51] The steps taken to preserve a tax benefit for MLPs are a clear reaffirmation of the policy enacted in 1987 to foster energy security and infrastructure development.[52] The effects of rate changes enacted as part of TCJA and section 199A on the relative benefit of the MLP structure are illustrated in Exhibit A, attached hereto. The Commission's MRT Order ignores the policy implications of its disparate treatment of MLPs,

[48] MLPs are not the only taxpayers that benefit from federal spending in the form of tax incentives. The staff of the Joint Committee on Taxation produces an annual list of "tax expenditures," i.e., special income tax provisions that "may be analogous to direct outlay programs and may be considered alternative means of accomplishing similar budget policy objectives." See Joint Committee on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 2017-2021 (JCX-34-18), May 25, 2018, at 2. Over 50 expenditures are listed for energy alone. *Id.* at 35-36.
[49] ***See*** I.R.C. § 199A(b)(2)(B)(i) (2012).
[50] The same benefit was given to real estate investment trusts (REITs), which facilitate investment in another capital-intensive sector of the economy.
[51] I.R.C. § 199A(b)(1)(B) (2012).
[52] As an aide to Sen. John Cornyn stated in the run-up to passage of the TCJA, with regard to the Senate amendments to section 199A, "[u]nder current law, publicly traded Master Limited Partnerships (MLPs) are taxed as pass-through entities, and this amendment simply preserves that status in the new bill." Ben White, What's in the Tax Deal, Politico (Dec. 14, 1017), available at https://www.politico.com/newsletters/morning-money/2017/12/14/whats-in-the-tax-deal-052458. In addition to indicating that the changes to section 199A were a reaffirmation of the prior-law benefit for MLPs, Sen. Cornyn's aide also noted another goal of the amendments, namely to "help enable MLPs to remain an affordable investment option for retail investors who are close to retirement or are retired." *Id.* As further discussed *supra*, taxable conversions of MLPs are a costly and unwelcome surprise, particularly for an investor population that supported infrastructure development in exchange for a predictable yield on its retirement savings.

including this reaffirmation of Congressional intent which postdates the court's *United Airlines* decision.

b. Disparate treatment of MLPs by denying an income tax allowance is contrary to Congressional intent.

The Commission's policy of not allowing MLPs to recover an income tax allowance, or even support recovery of an income tax allowance or other means to ensure parity with C-corporation pipelines, reverses the policy decision made by Congress in 1987 and reaffirmed in 2017 to provide a tax incentive to MLPs. The Commission should remain open to proposals that maintain parity between MLPs, other pass-through entities, and C-corporations, such as the MLPA proposal below, because such proposals comply with the Natural Gas Act as interpreted in *Hope* as well as with the intent of Congress in its establishment and support of MLPs as a critical infrastructure development vehicle for the energy sector.

The effect of the Order, and the impact of the uniform denial of an income tax allowance to all MLPs can be illustrated based on the facts of the simple example discussed above. While the example has assumed that the MLP and corporation have the same pre-tax net income, the results are amplified if the corporation is able to increase its pre-tax income to include an income tax allowance equal to the additional pre-tax income the corporation would need in order to be left with $1,000 after taxes. The corporation's net income would be grossed up to $1,265.82. After paying taxes of $265.82, the corporation would pay the 10-percent shareholder a dividend of $100. After taxes ($20), the shareholder would be left with $80. In comparison, the 10-percent owner of an MLP (the cash flow of which would not recognize income tax liability under the Revised Policy Statement) is left with only $70.40 after taxes. In short, even with the benefit of the new 199A deduction, *the same pre-tax-allowance net income leaves the owner of the MLP with a materially lower return than a similarly situated corporate shareholder*. Most critically, the benefit for the

MLP structure enacted in 1987 and reaffirmed thirty years later in TCJA is not just eliminated, it is completely reversed. As a result, the Revised Policy Statement makes MLPs an inferior vehicle as compared to corporations for owning cost-of-service-regulated pipelines. Moreover, the return earned by the MLP unitholder is not sufficient to cover the unitholder's income tax expense.

There are at least three unwelcome consequences to a policy that upsets the parity between MLPs and C-corporations at FERC and therefore causes MLPs to be less attractive than corporations as financing vehicles for cost-of-service pipelines. These consequences further demonstrate how the MRT Order will continue to create disparity and deprive MLP pipelines of the opportunity to recover their costs and earn a return "commensurate with returns on investments in other enterprises having corresponding risks."[53] First, if MLPs are not the ownership vehicle of choice for cost-of-service pipelines, the incentive Congress passed for infrastructure financing in the form of section 7704 will not be used. Thus, the cost of financing for these pipelines will increase, and critical infrastructure development will slow. The benefit of the tax expenditure for MLPs—an incentive for infrastructure development supported and defended by Congress for over thirty years—will ironically be lost for the cost-of-service-based pipelines previously considered to be the most suitable to be held by MLPs. Although cost-of-service pipelines held by MLPs have felt the most immediate impact of the Revised Policy Statement, the damage to MLPs has been considerably broader and could spread further into other segments of the energy sector. The damage and related policy uncertainty come at a time when the benefits of the MLP structure continue to be the focus of Senate and Congressional attention. In addition to Congress' recent reaffirmation of their commitment to the MLP structure in the 2017 TCJA, there is growing bipartisan support among members in both the House and Senate for expanding the MLP structure

[53] *See United Airlines, Inc.*, 827 F.3d at 128 (citing *Hope Nat. Gas Co.*, 320 U.S. at 603).

to include renewables. Many members of Congress support such expansion precisely because the MLP structure has been successful in attracting billions of dollars of lower cost capital to the build out our nation's energy infrastructure.

Second, MLPs owning these assets are incentivized to convert into corporations; such transactions are often taxable, meaning that the conversions themselves would take potentially billions of dollars of capital out of the energy infrastructure sector in the form of taxes paid by investors as a result of such conversions. Finally, continued marketplace and investor disruption increases the investment risk in the sector, further driving up capital costs and stifling infrastructure development.

While denial of an income tax allowance to MLPs has been characterized as a simple elimination of the "double recovery" of income taxes, as indeed was stated in the Revised Policy Statement and the Order on Rehearing, the Commission's orders have in fact so tipped the scales in favor of the corporate form—upsetting parity between pipelines based purely on organizational structure—that it is causing many MLPs holding cost-of-service pipelines to convert to C-corporations in order to retain an income tax allowance and ensure treatment commensurate with other pipelines. The examples discussed so far in this pleading ignore the fact that all types of entities, not just individuals, invest in MLPs. Often MLPs are sponsored by corporations that contribute assets to a partnership and retain ownership of the general partner and a material portion of the MLP's outstanding units. In these MLP structures, there is at least one level of tax before dividends are made to the corporate owner's investors. Failing to account for the intermediate taxes that must be paid results in systematic underestimation of the cost of service.

A corporate sponsor of an MLP that is developing a pipeline has the choice of owning the asset directly or through an MLP. Following the Commission's recent actions, the pipeline owned through the MLP will generate lower returns. Nevertheless, tax at the same rate will still be owed on the corporate sponsor's reduced return from the investment. Thus, investors (as well as corporate sponsors of MLPs) will prefer future investments be made by corporations. As a result, the Congressional tax incentive directed at the energy sector will have effectively been nullified for cost-of-service assets. In this respect, FERC has inadvertently thwarted the intent of Congress. Similarly, any MLP holding these assets that currently has a corporate sponsor is likely to view converting to a C-corporation as a rational economic choice. If the corporations holding partnership units were sufficiently compensated for income tax expense using the DCF ROE methodology, such conversions would not be occurring.

It is estimated that over 44 percent of MLP investors are corporations that under the new FERC policy will no longer receive the same benefit for investing in the country's infrastructure;[54] Exhibit B, attached hereto, provides further information regarding the demographics of MLP investors. If these same corporations invested directly, cost-of-service rates would be adjusted to take their income taxes into account. If they invested through other corporations, the dividends received deduction would at least partially (though perhaps not fully) reduce the additional tax burden on the end investors.[55] But no relief would be provided for investments by corporations through MLPs.[56]

The corporate conversions completed and announced to date demonstrate that the Revised Policy Statement and its application fails to allow MLPs a meaningful opportunity to seek recovery of an income tax allowance. In the wake of the Revised Policy Statement, a growing list of MLPs,

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[54] *See* Exhibit B.

[55] Section 243 of the Internal Revenue Code permits a corporation to deduct between 50 and 100 percent of the amount received as dividends from a taxable domestic corporation. *See* I.R.C. § 243 (2012).

[56] While the Commission in *Enable* appears to summarily dismiss this disparity in benefits, it cannot so easily dismiss the empirical evidence of disparity provided by the market's responses to the Revised Policy Statement and Order on Rehearing.

including Enbridge Energy Partners LP, Boardwalk Pipeline Partners LP, Dominion Energy Midstream Partners LP, TC Pipelines, LP, Williams Partners LP, and Spectra Energy Partners LP have initiated or have indicated plans to change their tax classification to taxable corporations. Many of these MLPs stated publicly that the Revised Policy Statement is a material factor in their deliberations regarding a change to entity classification for tax purposes and their strategy going forward.[57] By electing to be taxed as a corporation, an MLP can obtain the same income tax allowance as other pipeline companies classified as corporations.[58] Although the motivations for

[57] *See, e.g.,* TC PipeLines, LP, Quarterly Report (Form 10-Q) (May 2, 2018) ("TransCanada has stated that the Partnership is not seen as a viable funding lever in the absence of changes to the 2018 FERC Actions and as a result, it does not anticipate further asset dropdowns to the Partnership at this time. This traditional source of growth will not be accessible under the current circumstances, and options for further growth are significantly limited. Accordingly, many longer-term implications must be re-evaluated. Various strategic options are being considered currently, including a reorganization of the Partnership's legal structure to partially mitigate the effects of the 2018 FERC Actions."); Enbridge Energy Partners, L.P., Quarterly Report (Form 10-Q) (May 10, 2018) ("Both the direct consequences of the change in FERC policy, as well as the adverse market effect may negatively impact the longer-term availability of capital to us at attractive terms."); Boardwalk Pipeline Partners, LP, Quarterly Report (Form 10-Q) (Apr. 30, 2018) ("Any decision by our general partner to exercise [its] purchase right will be made by Boardwalk Pipelines Holding Corp. (BPHC), the sole member of Boardwalk GP, LLC (BGL) and a wholly-owned subsidiary of Loews, rather than by our Board. We have been informed by BPHC that it is analyzing the FERC's recent actions and seriously considering its purchase right under our partnership agreement in connection therewith.").

[58] For example, Jim Simpson, a sector analyst, recently explained the reasoning behind Williams Partners' conversion as follows:

> "So let's look at [Williams Partners' Transcontinental Gas Pipe Line Co. LLC], a major pipeline in the Northeast," Simpson said. "What does this [FERC policy change] mean for a pipe like Transco?"
>
> Before the changes to tax policy, Transco's income before taxes was about $567 million, Simpson said. Transco's income tax burden was about 37.5%, with a federal rate of 35% and a state rate of roughly 2.5%. Its composite tax was about $212 million, which lowered its net income to $354 million. "That makes my ROE 10%," comfortably within the allowable 10% to 14% range. "Life is good."
>
> With Transco in an MLP structure, the tax allowance is zero, Simpson said. "My ROE is now 16%," above the allowable range. "My max tariff rate is at risk."
>
> If Transco is rolled into the C-corp with Williams Partners, its tax allowance is 23.5%, with a federal tax rate of 21% plus about 2.5% for the state rate, Simpson said. Transco's composite tax is about $133 million and net income is about $433 million. Its ROE is 12%. "I'm in my allowable range of 10% to 14%, and I'm probably OK."
>
> "One driver for the Williams LP — not the only driver — to roll up to a C-corp is to lower the ROE on a pipe like Transco," Simpson said.
>
> There could be similar effects on other pipeline companies, depending on their corporate structures and their tariff arrangements. "So from the FERC tax standpoint, essentially that risk to an MLP can be mitigated by rolling up to a C-corp," Simpson said. He observed that the equity market was pleased with the Williams corporation and its general partner after it announced that it would absorb the partnership.

the conversion of each individual company may be complex, the sheer number of conversions contemplated demonstrates clearly that the FERC's policy change has had a dramatic effect and indicates that unless the Revised Policy Statement is altered or the clarification requested is granted, MLPs holding predominantly cost-of-service pipelines may cease to exist.

Ironically, these pipelines had heretofore been considered among the most appropriately suited for the MLP structure and comparatively the safest of such MLP investments. The benefit of the tax expenditure for MLPs—an incentive for infrastructure development supported and defended by Congress for over thirty years—will be lost for the pipelines previously considered to be the most suitable to be held by MLPs. Although cost-of-service-based pipelines held by MLPs have felt the most immediate impact of the Revised Policy Statement and lack of clarity regarding the ability of MLPs to argue for an income tax allowance or other mechanisms to ensure parity, the damage to MLPs has been considerably broader and could spread further into other segments of the energy sector.[59]

Of equal concern is that transactions that change the entity classification of an MLP to a corporation are not typically tax-free to MLP unitholders. For example, if the corporate sponsor of an MLP acquires all of the outstanding units of the MLP for its stock, the MLP becomes disregarded as an entity separate from the sponsor (and would be taxed as a C-corporation); most unitholders would recognize immediate gain upon receipt of the sponsor's stock and generally would not receive cash to pay the required taxes. In the aggregate, the taxes paid on MLP conversions could amount to billions of dollars. Tax dollars paid to the government are no longer invested in the energy sector.

Sean Sullivan, *MLP Roll-ups Can Protect Pipeline Rates after FERC Tax Changes, Researcher Says*, SNL Financial Extra (June 15, 2018).

[59] *See supra* note 32.

Finally, taxable conversions of MLPs compound the injury to those investors who already suffered a significant drop in the value of their investments when the Revised Policy Statement was issued. At a minimum, investors who sought safe, steady yields from MLPs and investments in energy infrastructure will think twice before investing in that industry again.

A reduction in investment in pipeline infrastructure—due to lack of parity between MLPs and other corporate forms, because the Congressional incentive for MLPs will not be claimed, because taxable conversions may squeeze billions of investment dollars from the sector, and because investors who got burned will be slow to come back—will ultimately work to the disadvantage of shippers, who will face higher tariffs reflecting a higher overall cost of service. The Commission's failure to allow pipelines owned by MLPs to reflect liability on income they earn, to ensure parity, will ultimately harm the Commission's and Congress' overarching goal of maintaining a reliable, safe energy infrastructure system. Further, failure to allow for parity among corporate forms reflects an incomplete understanding of the intent of Congress in passing the TCJA, the tax benefits of the partnership structure, and the legal requirement of *Hope* and *United Airlines*. The Commission must grant MLPA's request for rehearing in these proceedings. To aid in this evaluation, the MLPA provides a different approach to income tax allowance for partnerships.

4. <u>The Commission erred by failing to engage in reasoned decision making in applying the Revised Policy Statement in this proceeding while dismissing requests for rehearing of the Revised Policy Statement, resulting in a binding Commission policy with no opportunity for rehearing.</u>

MLPA and a number of other commenters provided substantial evidence in Docket No. PL17-1 that recovery of an income tax allowance by MLPs does not result in double recovery of income taxes and that any questions related to the propriety of an income tax allowance should be resolved on a case-by-case basis. As detailed above, the Commission dismissed requests for rehearing, arguing that the Revised Policy Statement was non-binding and no pipeline was aggrieved by the decision.[60] However, the Commission in the MRT Order then cited the Revised Policy Statement itself in granting summary disposition with respect to MRT's request to include an income tax allowance. In effect, the Commission failed to address substantial evidence and arguments in the Revised Policy Statement, dismissing that evidence as inappropriate in a policy statement proceeding, then reasserted the relevance of the Revised Policy Statement without ever confronting MLPA's or others' arguments regarding the flaws in the Revised Policy Statement. This process circumvents standard comment and notice procedures and is the opposite of reasoned decision making. Furthermore, while the Commission's analysis of the "double recovery" argument and related issues was anemic in the Revised Policy Statement proceeding, it is even less complete and sufficient in the MRT Order. The Commission should grant rehearing and fully evaluate all issues set forth in the Revised Policy Statement before applying them to individual pipelines.

[60] Order on Rehearing at P 7.

V.
CONCLUSION

WHEREFORE, for the foregoing reasons, MLPA respectfully requests the Commission grant its motion to intervene out-of-time and grant rehearing of the MRT Order as further requested herein.

Respectfully submitted,

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EXHIBIT A

Exhibit A

TCJA: Comparison of MLPs to C Corporations and Parity with REITs

Before Tax Reform:
- Highest marginal individual tax rate of 39.6%
- Corporate tax rate of 35%
- State and local income tax rate of 5%
- Qualified dividend rate of 20%
- Net investment income tax of 3.8%

House Bill:
- Highest marginal individual tax rate of 39.6%
- Qualified passthrough income tax rate of 25%
- Corporate tax rate of 20%
- State and local income tax rate of 5%
- Limitation on deduction of state and local income taxes for individuals
- Qualified dividend rate of 20%
- Net investment income tax of 3.8%

Senate Bill (as originally proposed):
- Highest marginal individual tax rate of 38.5%
- 23% deduction on qualified passthrough income (publicly traded partnerships subject to wage/property limitations)
- Corporate tax rate of 20%
- State and local income tax rate of 5%
- Limitation on deduction of state and local income taxes for individuals
- Qualified dividend rate of 20%
- Net investment income tax of 3.8%

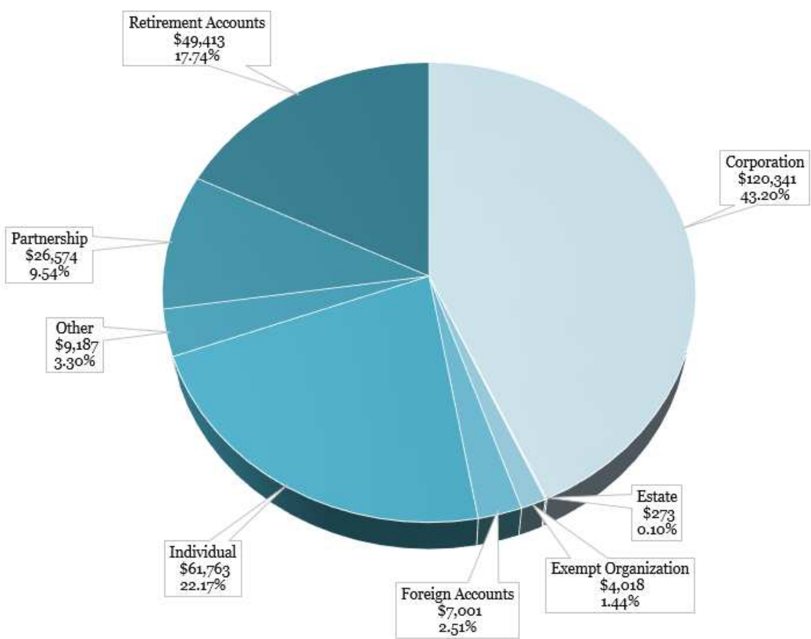
Senate Bill (as amended):
- Same as originally proposed Senate Bill
- Amendment for 23% deduction on qualified passthrough income to apply to publicly traded partnerships without applying wage/property limitations

After Tax Reform:
- Highest marginal individual tax rate of 37%
- 20% deduction on qualified passthrough income
- Corporate tax rate of 21%
- State and local income tax rate of 5%
- Limitation on deduction of state and local income taxes for individuals
- Qualified dividend rate of 20%
- Net investment income tax of 3.8%

EXHIBIT B

Exhibit B

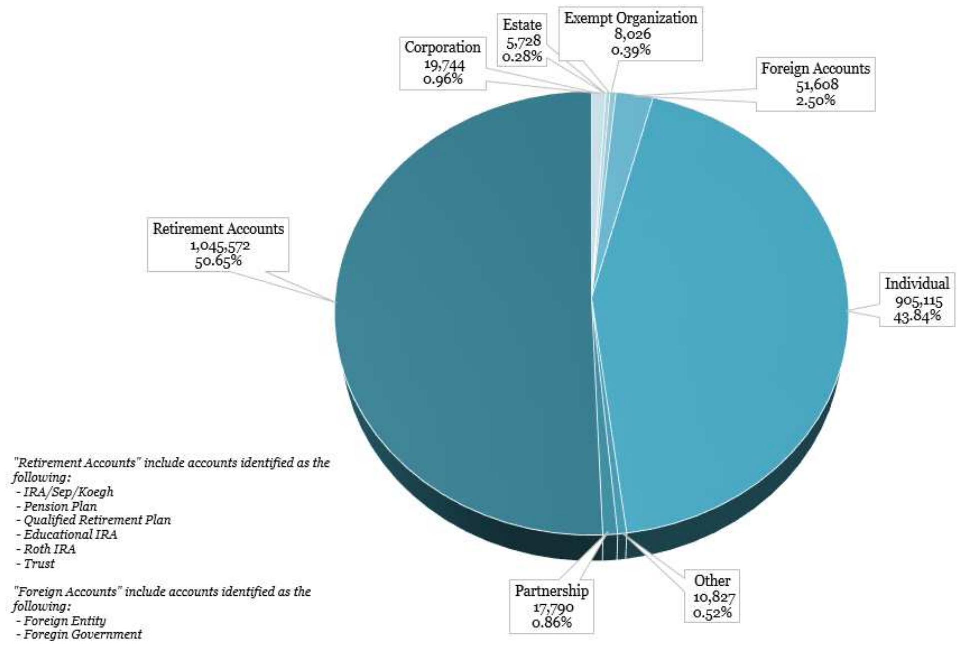
Value of MLP Equity Owned by Entity Type



MLP equity value of $278.6 million across a sample of 60 MLPs as of December 31, 2017

Data provided by PwC (in $m)

Number of MLP Investors by Entity Type

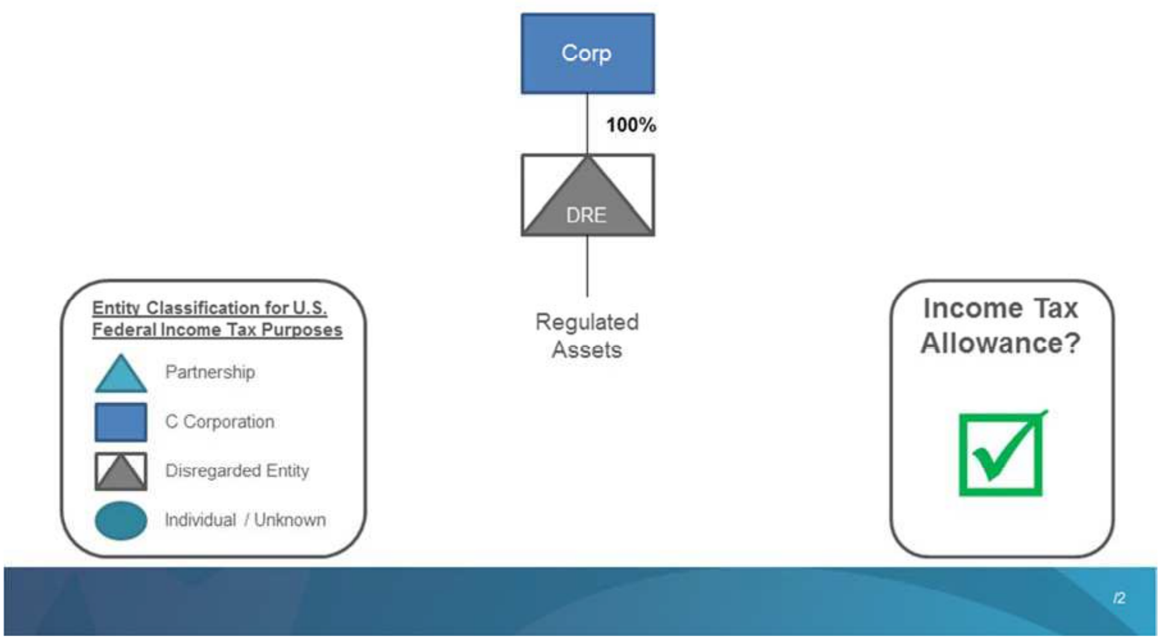


3.65 million investments made by over 2 million investors across a sample of 60 MLPs as of December 31, 2017

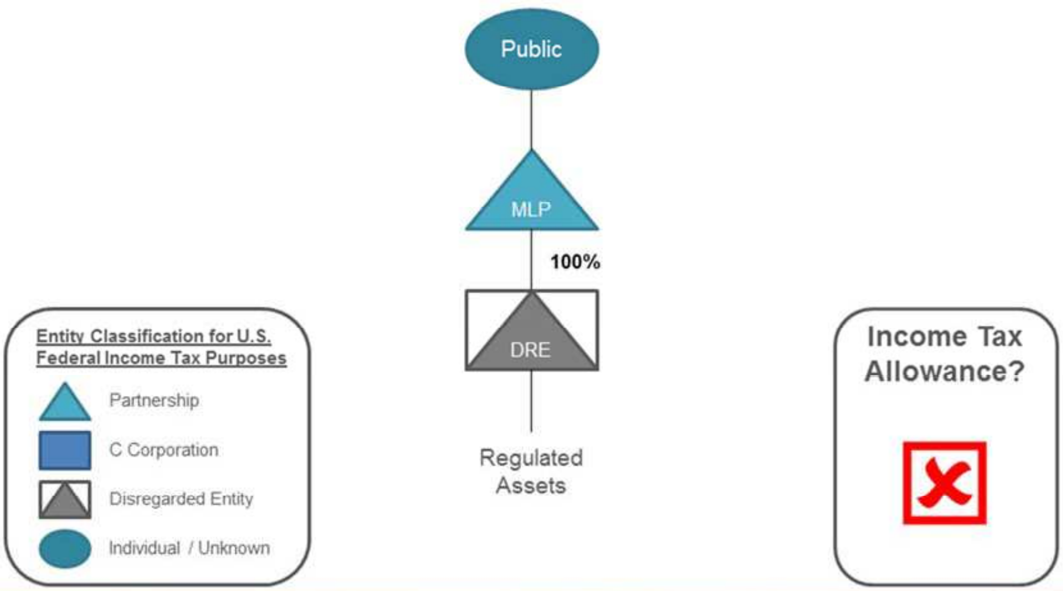
Data provided by PwC

EXHIBIT C

Structure #1: Regulated Assets Owned by a Corporation



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



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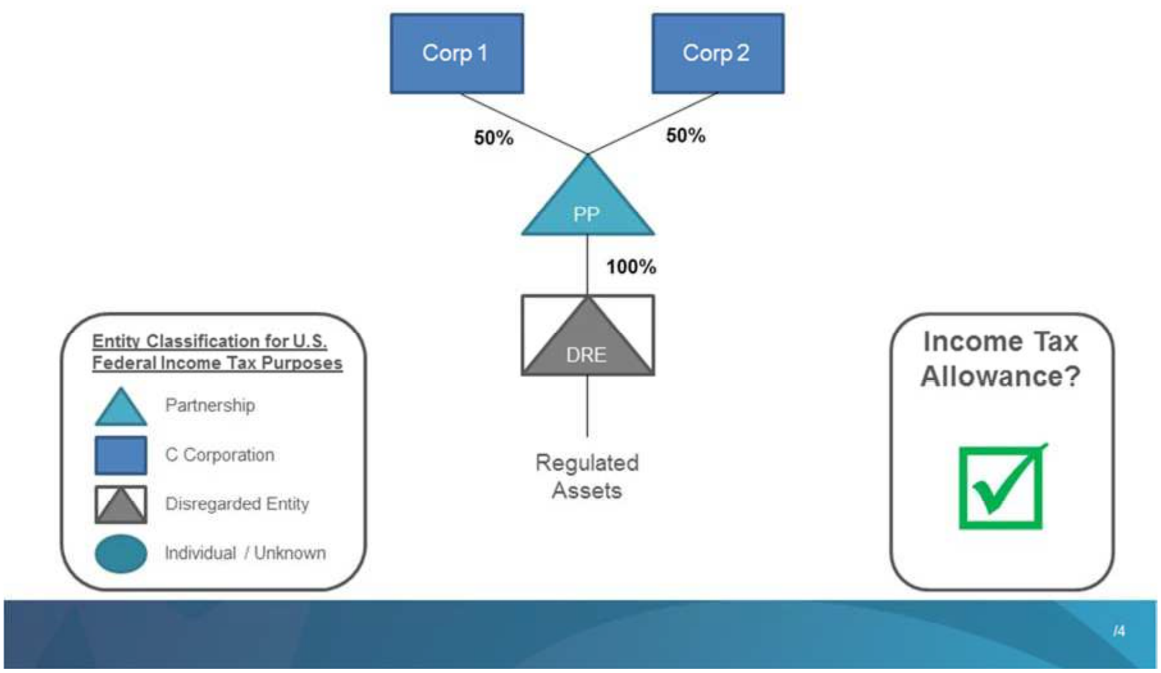
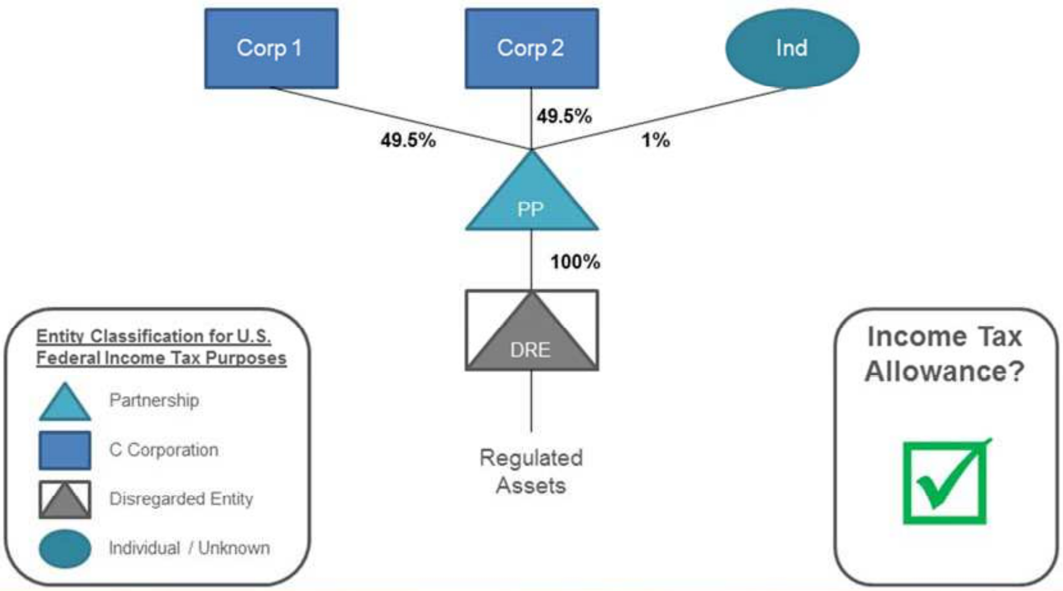
Structure #3: Regulated Assets Owned by Private Partnership of Corporations



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



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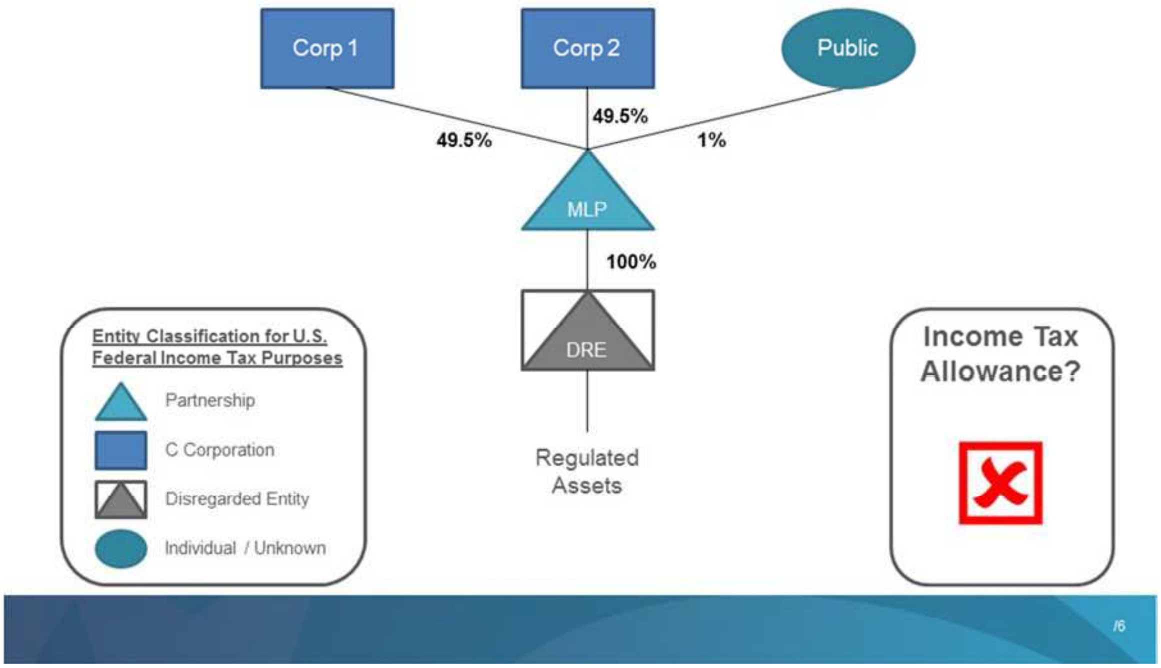
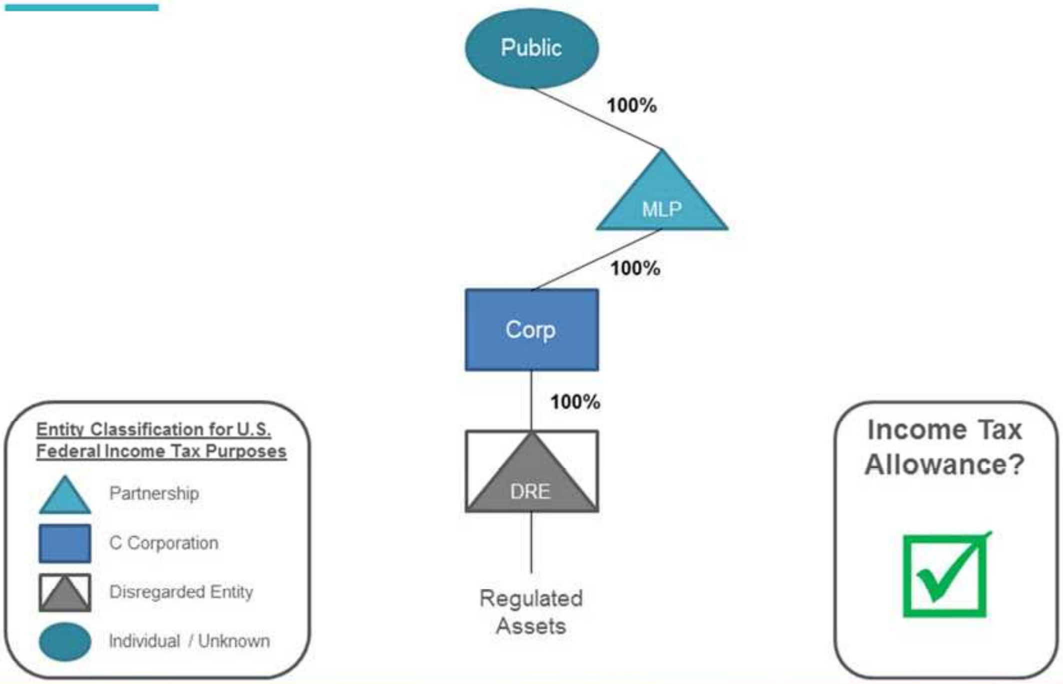
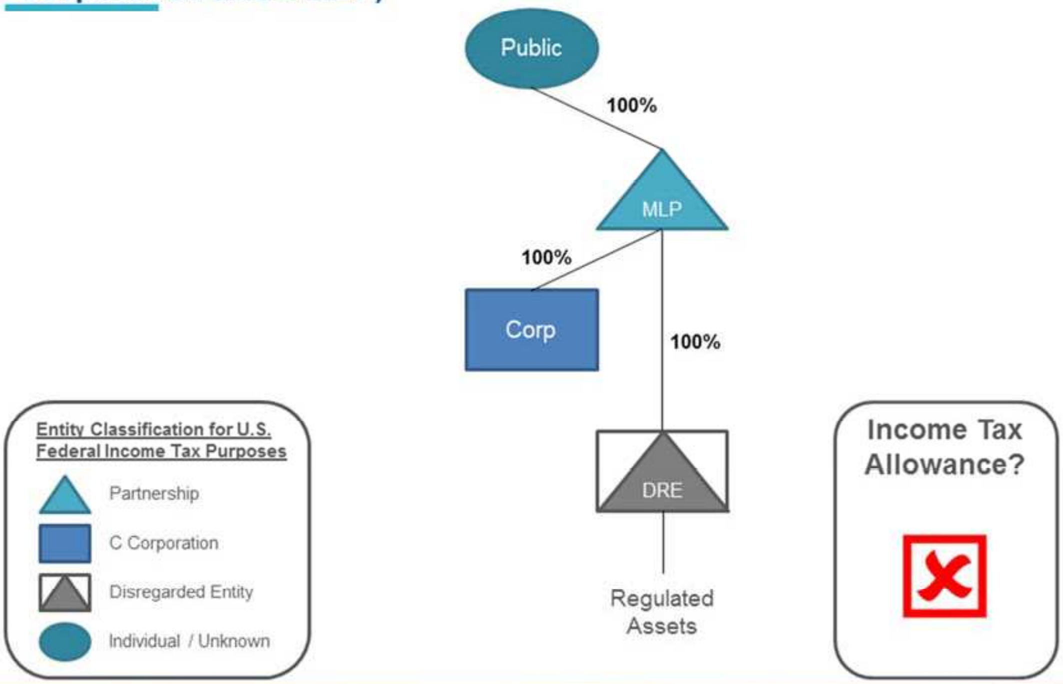
Structure #5: Regulated Assets Owned by MLP, with 1% Public Ownership



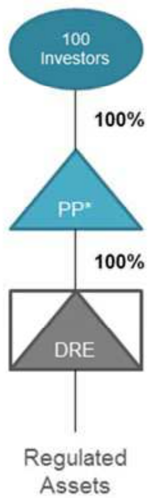
Structure #6: Regulated Assets Owned by Corporation under MLP



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.

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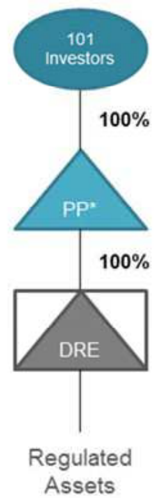
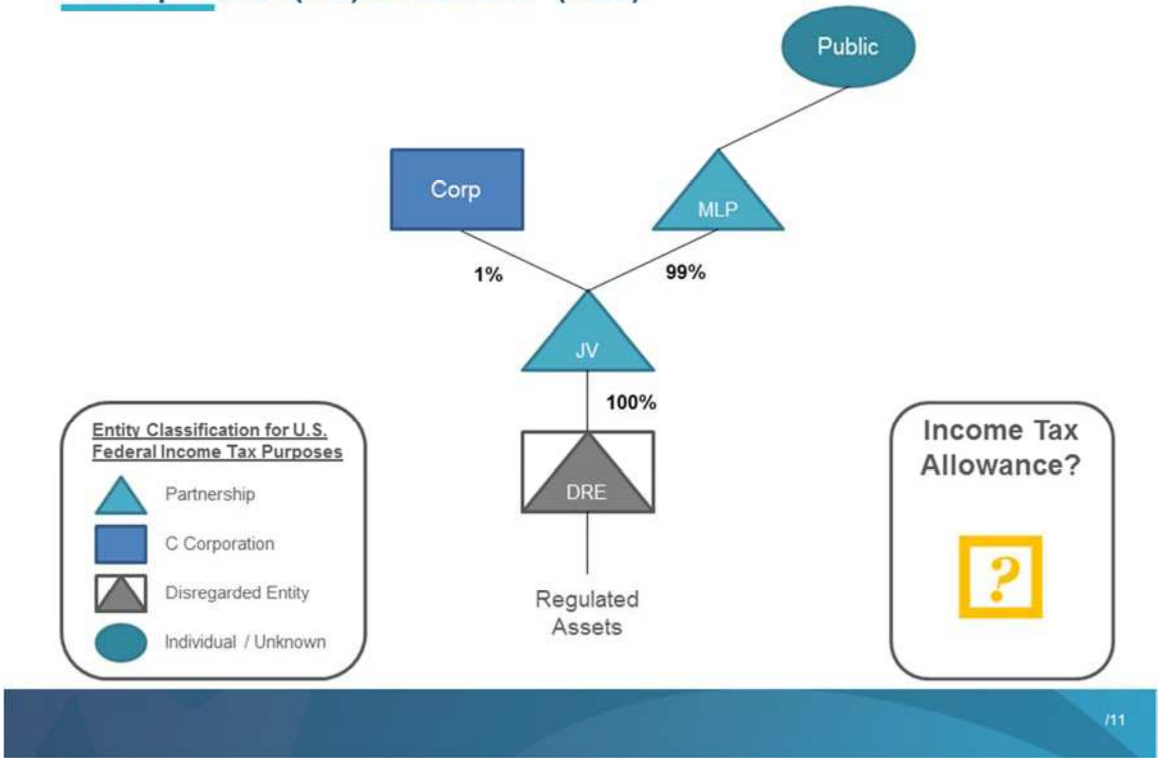
Structure #9: Regulated Assets Owned by Private Partnership* among 101 Investors

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



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%)

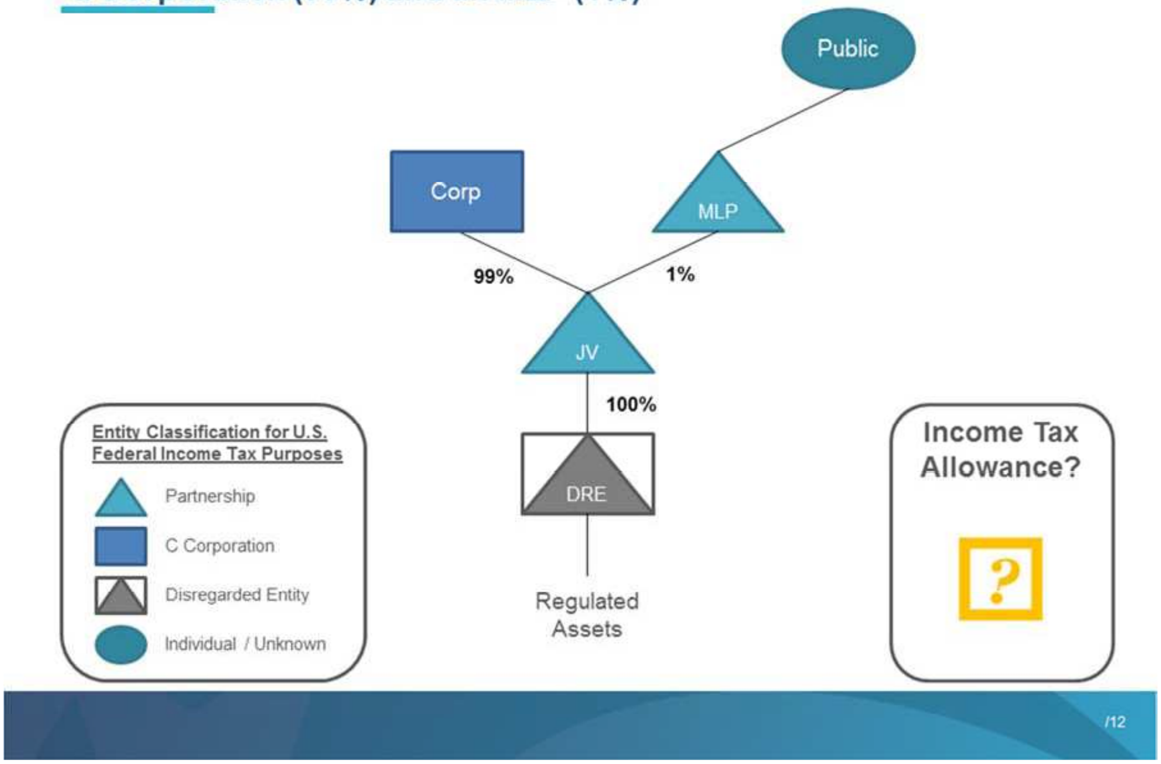


EXHIBIT D

FERC Announcement – MLP Market Cap. Impact

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➢ 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

MLPA
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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

MLPA
The Voice of America's Master Limited Partnerships

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*

MLPA
The Voice of America's Master Limited Partnerships

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