

168 FERC ¶ 61,136  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Inquiry Regarding the Commission's Policy for  
Recovery of Income Tax Costs

Docket No. PL17-1-001

ORDER ON REQUEST FOR CLARIFICATION

(Issued August 29, 2019)

1. In this order, the Commission dismisses the August 17, 2018 motion for clarification or, in the alternative, reconsideration filed by the Master Limited Partnership Association (MLPA) of the Commission's July 18, 2018 Order on Rehearing dismissing requests for rehearing of the Revised Policy Statement on Treatment of Income Taxes (Revised Policy Statement).<sup>1</sup> In the Revised Policy Statement, the Commission addressed the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*<sup>2</sup> and provided guidance regarding the treatment of Accumulated Deferred Income Taxes (ADIT) where the income tax allowance is eliminated from cost-of-service rates.

2. MLPA asserts that (1) the Commission's policy must ensure parity between equity owners in partnership and corporate pipelines and allow pipelines to earn a return sufficient to assure confidence in the financial integrity of the enterprise, (2) the policy results in disparate treatment based on choice of corporate form, absent clarification providing for a bona fide opportunity to recover an income tax allowance, (3) the policy is contrary to Congressional intent to maintain tax benefits of a partnership structure for natural resource businesses in the Tax Cuts and Jobs Act and (4) the Commission should clarify that pipelines owned by master limited partnerships may file proposals for income tax allowances, using models proposed by the association.

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<sup>1</sup> *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018) (Order on Rehearing).

<sup>2</sup> *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016).

3. In its order on rehearing of the Revised Policy Statement, the Commission stated, The Commission's normal practice is to dismiss requests for rehearing of policy statements and reserve any further discussions of the issues contained therein for specific proceedings in which the policy is applied. Natural Gas Act (NGA) section 19(a) provides for parties to request rehearing only when they are "aggrieved by an order issued by the Commission." As discussed above, the Revised Policy Statement is not a binding rule that is "finally determinative of the issues or rights to which it is addressed," but rather, only "announces the agency's tentative intentions for the future." Therefore, no entities are aggrieved by the Revised Policy Statement, which does not, in and of itself, finally determine the rights and duties of any entities.<sup>3</sup>

On that basis, the Commission dismissed the requests for rehearing of the Revised Policy Statement.<sup>4</sup>

4. The Commission's normal practice is to dismiss requests for rehearing of policy statements and reserve any further discussions of the issues contained therein for specific proceedings in which the policy is applied. That rationale applies equally to the requests for clarification and reconsideration in this proceeding. On that basis, the Commission dismisses MLPA's requests for clarification and reconsideration.<sup>5</sup>

The Commission orders:

The August 17, 2018 motion for clarification or, in the alternative, reconsideration filed in this docket is dismissed.

By the Commission. Commissioner McNamee is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> Order on Rehearing, 164 FERC ¶ 61,030 at P 7 (citing NGA, 15 U.S.C. § 717r (2012); *Pacific Gas and Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974)) (footnotes omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Similarly, we dismiss the Sept. 4, 2018 answer submitted by *pro se* litigant R. Gordon Gooch.