UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Interstate and Intrastate Natural Gas Pipelines;	)	
Rate Changes Relating to Federal Income	)	**Docket No. RM18-11-000**
Tax Rate	)	
	)	

COMMENTS OF
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Pursuant to the Notice of Proposed Rulemaking ("NOPR") issued on March 15, 2018 by the Federal Energy Regulatory Commission ("FERC" or the "Commission") in the above-referenced proceeding,[1] the Interstate Natural Gas Association of America ("INGAA") respectfully submits these comments.[2] The Commission proposes in the NOPR to require interstate natural gas pipelines to submit an informational filing that seeks to assess the rate impact of the Tax Cut and Jobs Act ("TCJA"),[3] and proposes four options for natural gas pipelines to address the changes to their tax-related cost of service components. INGAA requests clarification and revisions to the proposed rule, as discussed herein.

---

[1] *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 162 FERC ¶ 61,226 (2018).

[2] INGAA is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in the United States. INGAA is comprised of 27 members, representing the vast majority of the U.S. interstate natural gas transmission pipeline companies. INGAA's members operate nearly 200,000 miles of pipelines and serve as an indispensable link between natural gas producers and consumers. Its U.S. members are regulated by the Commission pursuant to the Natural Gas Act, 15 U.S.C. §§ 717-717w.

[3] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) ("Tax Cut and Jobs Act," or "TCJA").

EXECUTIVE SUMMARY

INGAA appreciates the Commission's efforts to chart a path forward to address the TCJA's reduction in corporate income tax rates in a manner that is generally consistent with the ratemaking requirements of Sections 4 and 5 of the Natural Gas Act ("NGA"). The NOPR generally conforms to the prohibition against piecemeal ratemaking, recognizing that the Commission must evaluate all components of a pipeline's cost of service before ordering a rate adjustment, as decreases in one cost component may offset increases in other cost components. The NOPR also acknowledges the importance of upholding freely-negotiated agreements between pipelines and shippers, including rate case settlements and negotiated rate service agreements. Nevertheless, INGAA believes that, as proposed, the NOPR must be significantly modified to allow pipelines a full and fair opportunity to recover their full revenue requirement.

The NOPR proposes to implement the Commission's Revised Policy Statement on Treatment of Income Taxes ("RPS"), in which the Commission stated that it "will no longer permit MLPs to recover an income tax allowance in their cost of service."[4] The RPS further questions whether certain pass-through entities are entitled to an income tax allowance. INGAA and numerous other parties have sought rehearing of the RPS, which was issued without notice and comment rulemaking, arguing that it is not the product of reasoned decision-making. Parties seeking rehearing have requested that the Commission revisit the conclusions in the RPS and clarify that all pipelines, including master limited partnership ("MLP") pipelines, will be allowed to seek an income tax allowance in future rate proceedings.

[4] *Revised Policy Statement on Treatment of Income Taxes*, 162 FERC ¶ 61,227, PP 2, 8 (2018) ("RPS").

The Commission should not compound the problems of the RPS by attempting to implement its policy in this proceeding. The Commission has not justified applying the RPS, which is not a binding rule, in this proceeding. The Commission should remove the requirements in the proposed rule that certain pipelines must (1) eliminate a tax allowance when submitting Form No. 501-G, and (2) eliminate the tax allowance when filing the limited Section 4 rate proceedings authorized by the NOPR. The Commission should instead clarify that all pipelines, including MLP pipelines, will be allowed to propose and present evidence of an income tax allowance in future rate proceedings.

Removing the income tax allowance issues from the proposed rule will reduce the uncertainty associated with the proposed rule and help allow pipelines and their customers to focus on the potential rate reductions resulting from the reduction of the corporate income tax rate in the TCJA. The NOPR proposes a compressed timeframe for pipelines to file Form No. 501-G and to select from the four options for addressing the effect of the TCJA on the pipelines' rates. INGAA recognizes the Commission's desire to take action to address the rate impact from the TCJA's income tax rate reductions. The interjection of tax allowance issues into this process has introduced uncertainty that will delay the resolution of these issues. This uncertainty, if left unresolved, would reduce the likelihood that pipelines will file limited NGA Section 4 rate reductions or achieve uncontested, pre-packaged rate settlements. The Commission can avoid this uncertainty by eliminating income tax allowance issues from the proposed rule. If the income tax allowance issues remain in this proceeding, the Commission should make the clarifications and revisions to the final rule as requested by INGAA.

The NOPR also creates substantial uncertainty regarding the rate treatment of accumulated deferred income taxes ("ADIT"). The Commission has issued a separate Notice of Inquiry ("NOI") in Docket No. RM18-12-000 seeking comment on the effects of the TCJA on ADIT, including, among other things, its effect on rate base, flow-back or recovery of excess or deficient ADIT, and the amortization of excess and deficient ADIT. INGAA and its members intend to file comments in response to the NOI, and the Commission must carefully consider those comments in light of the Commission's significant body of case law, related Internal Revenue Service regulations, and the specific factual circumstances of individual pipelines. There is the potential that the proposed rule in this proceeding could be implemented before the Commission, pipelines, and shippers have had time to consider ADIT issues, which creates substantial uncertainty for pipelines as to the appropriate rate treatment of ADIT in this proceeding. The Commission can avoid this uncertainty by completing the rulemaking process in Docket No. RM18-12-000 before or at the same time it issues a final rule in the instant proceeding.

The Commission should provide procedural clarifications and modifications to the NOPR to appropriately reflect that Form No. 501-G is an informational filing that does not affect parties' substantive rights. The Commission should eliminate the NOPR's proposal to place pipelines' Form No. 501-G submissions in individual dockets subject to intervention and protest, and should instead treat these submissions as undocketed informational filings, consistent with its treatment of pipelines' annual Form No. 2 filings. The Commission also should clarify that pipelines' decisions not to object to any instructions in the Form No. 501-G, and to provide the information requested therein does

not affect their rights to take contrary positions in future rate proceedings, or affect the burden of proof in such proceedings.

INGAA's comments further request additional specific clarifications and revisions to the proposed rule and Form No. 501-G, which the Commission should grant for the reasons discussed herein.

COMMENTS

I. Background

On December 22, 2017, the President signed the TCJA into law, which reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. The TCJA also generally (1) reduces personal income tax rates and (2) provides for most taxpayers a deduction of 20 percent of qualified business income received from MLP pipelines. The NOPR is designed to establish a process that will allow the Commission to address, where appropriate, the rate impact of (1) the recent reduction in the corporate income tax rate in the TCJA and (2) the Commission's "elimination of the income tax allowance for MLPs"[5] consistent with the RPS which was issued concurrently with the NOPR. The Commission also issued a NOI that seeks comments on whether, as a result of the TCJA, the Commission should address changes related to ADIT and bonus depreciation.[6]

---

[5] NOPR at PP 3, 24.

[6] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (2018).

A. The Revised Policy Statement

The RPS responds to the opinion of the D.C. Circuit in *United Airlines, Inc. v. FERC*.[7] In *United Airlines*, the D.C. Circuit addressed a petition for review of the Commission's decision in *SFPP, L.P.*,[8] a 2008 rate case in which the Commission permitted SFPP, an oil pipeline then wholly owned by an MLP, to include an income tax allowance in its transportation rate. Shippers on SFPP argued before the D.C. Circuit that the income tax allowance resulted in SFPP earning a "double-recovery" of taxes on the basis that MLP pipelines receive both (1) the income tax allowance and (2) a "pre-tax" return on equity ("ROE") via the Commission's discounted cash flow ("DCF") methodology. The court held that the Commission had "not provided sufficient justification for its conclusion that there is no double recovery of taxes for partnership pipelines receiving an income tax allowance in addition to the discounted cash flow return on equity."[9]

United Airlines did not hold that a tax allowance for MLP pipelines is improper. The court specifically found that "FERC has a justifiable basis for its attribution of partner taxes to the partnership pipeline."[10] The court noted that in *ExxonMobil v. FERC,*[11] it had upheld the Commission's former policy entitling MLP pipelines to an allowance to recover their income tax burden.[12] The *ExxonMobil* court had recognized that "investors in a

---

[7] 827 F.3d 122 (D.C. Cir. 2016). The *United Airlines* proceeding was based solely on the limited evidentiary record concerning facts specific to SFPP's oil pipeline rates. Natural gas pipelines did not have a real opportunity to participate in the *United Airlines* proceedings.
[8] *SFPP, L.P.*, Opinion No. 511, 134 FERC ¶ 61,121 (2011), *order on reh'g*, Opinion No. 511-A, 137 FERC ¶ 61,220 (2011), *order on reh'g*, Opinion No. 511-B, 150 FERC ¶ 61,096 (2015), *order on remand*, Opinion No. 511-C, 162 FERC ¶ 61,228 (2018).
[9] *United Airlines*, 827 F.3d at 136.
[10] *Id*. at 136-37.
[11] *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945 (D.C. Cir. 2007).
[12] *United Airlines*, 827 F.3d at 134 (citing *ExxonMobil*, 487 F.3d at 953).

limited partnership are required to pay tax on their distributive shares of the partnership income, even if they do not receive a cash distribution."[13]

The D.C. Circuit expressly held in *United Airlines* that it was not overturning its opinion in *ExxonMobil*.[14] *ExxonMobil*, which remains binding precedent, specifically upheld the Commission's determination that "taxes on the income received from a limited partnership should be allocated to the pipeline and included in the regulated entity's cost-of-service."[15] The court further held in *ExxonMobil* that the Commission had supported its determination that the return to owners of MLPs would "be reduced below that of a corporation investing in the same asset if such entities are not afforded an income tax allowance on their public utility income," and that a "full tax allowance" is necessary for MLP pipelines "to maintain parity with pipelines that operate as corporations."[16] The court's remand in *United Airlines* for the Commission "to consider . . . mechanisms for which the Commission can demonstrate that there is no double recovery,"[17] was *not* a command for the Commission to require MLP pipelines to "eliminate any income tax allowance from their rates."[18]

In response to the *United Airlines* decision, the Commission issued a Notice of Inquiry requesting comments regarding how to address any double recovery resulting from the Commission's income tax allowance and rate of return policies.[19] INGAA submitted

---

[13] *Id.* at 137 (citing *ExxonMobil*, 487 F.3d at 954).
[14] The court recognized that petitioners had not sought to overturn *ExxonMobil*, "which [it was] unable to do in any case absent an *en banc* decision from the Court." *United Airlines*, 827 F.3d at 137 (citing *LaShawn A. v. Barry*, 87 F.3d 1389, 1395 (D.C. Cir. 1996)).
[15] *ExxonMobil*, 487 F.3d at 954.
[16] *Id.* at 952-53 (internal punctuation omitted) (quoting *Inquiry Regarding Income Tax Allowances*, 111 FERC ¶ 61,139, at p. 61,742 (2005) ("2005 Policy Statement")).
[17] *United Airlines*, 827 F.3d at 137.
[18] NOPR at P 24 (citing RPS).
[19] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (2016).

comments to demonstrate that the Commission's presumption with regard to the purported double recovery was flawed.[20] INGAA included testimony from Dr. Merle Erickson that showed, through a life-cycle analysis of the overall tax liability associated with investments in both MLP and corporate pipelines, that the income tax allowance does not cause MLP pipelines to over-recover their income tax payments.[21] INGAA also provided expert testimony from Mr. Barry Sullivan explaining that a tax allowance is necessary for all pipelines to have the opportunity to earn the ROE derived from the Commission's DCF methodology, and that a tax allowance for MLPs does not result in a double recovery.[22] Given its support for the Commission's then-existing policy, INGAA did not propose any alternatives.

On March 15, 2018, the Commission issued the RPS, in which it stated that it "will no longer permit MLPs to recover an income tax allowance in their cost of service."[23] The RPS stated that non-MLP partnerships and other pass-through business forms may recover an income tax allowance if they are able to address the double recovery concern in future proceedings.[24]

The Commission did not reconcile its new policy with its prior determination, affirmed in *ExxonMobil*, that the tax allowance for partnerships was necessary to provide parity between partnership pipelines and corporate pipelines.[25] The Commission provided

---

[20] Initial Comments of INGAA, Docket No. PL17-1-000 (Mar. 8, 2017).
[21] *See* Prepared Direct Testimony of Dr. Merle Erickson, on Behalf of INGAA, Docket No. PL17-1-000 (Mar. 8, 2017).
[22] Prepared Direct Testimony of Barry E. Sullivan, on Behalf of INGAA, Docket No. PL17-1-000 (Mar. 8, 2017).
[23] RPS at P 8.
[24] *Id.* at PP 3, 8, 45.
[25] *See* 2005 Policy Statement, 111 FERC ¶ 61,139; *ExxonMobil*, 487 F.3d at 953 (upholding determination in 2005 Policy Statement that "pipelines operating as limited partnerships should receive a full income tax allowance in order to maintain parity with pipelines that operate as corporations.").

cursory responses to INGAA's comments and testimony, dismissing detailed and substantive studies in a few paragraphs. In response to Dr. Erickson's empirical demonstration that investors in pipelines owned by corporations and MLPs paid similar income taxes over a five-year period, the Commission stated that the income tax allowance leads to a double recovery for MLPs simply because the DCF model incorporates investor tax costs, irrespective of the presented empirical data.[26] The Commission also dismissed Dr. Erickson's analysis on grounds that changes to some of the study's underlying assumptions would change its result.[27] In response to Mr. Sullivan's study showing that corporate-owned pipelines do not generate the lower DCF returns, distribution-dividend yields, and IBES growth rates that would be expected relative to pipelines that were purportedly double-recovering their tax costs,[28] the Commission asserted that the studies contained methodological flaws but did not demonstrate that the purported flaws undermined Mr. Sullivan's conclusions.[29] The Commission relied only upon a theoretical assertion of double recovery raised in a single oil pipeline rate case, notwithstanding actual data showing the absence of any alleged over-recovery.[30]

---

[26] RPS at P 23 (the MLP income tax allowance leads to a double recovery "[w]hether or not the overall MLP and corporate tax burdens are equivalent or different").
[27] *Id.* at P 24.
[28] Sullivan Testimony at 42-69.
[29] RPS at PP 33, 35. The Commission stated that the studies did not account for differences in risk and other factors between MLP- and corporate-owned pipelines used in the studies, and that their sample sizes were too small.
[30] *See id.* at P 28 ("The reasoning in *United Airlines* holds, whether or not MLP DCF returns exceed corporate DCF returns"). The Commission dismissed INGAA's analytical arguments in similarly short shrift. In response to INGAA's explanation that unitholders of MLP pipelines pay comparable "first tier" taxes to the corporate-owned pipeline's corporate income tax, the Commission stated that the D.C. Circuit had found that the DCF ROE enables the recovery of the MLPs' "first tier" tax costs, so no income tax allowance is necessary for MLPs. RPS at PP 15-16. INGAA also explained that an MLP investor's income taxes are not a component of the DCF analysis, and that the income tax allowance is an individual line item in the pipeline's cost of service, separate from the ROE generated by the DCF analysis. The Commission rejected this reasoning on grounds that the DCF ROE determines a pre-tax investor return that reflects the MLP investor's tax costs and its post-tax return. RPS at PP 20-21.

On April 16, 2018, INGAA and other parties sought rehearing of the Commission's RPS, arguing among other things that the Commission's determination to no longer permit an MLP to recover an income tax allowance in its cost of service was not the product of reasoned decision-making and otherwise improper.[31]

B. The NOPR and Notice of Inquiry

Concurrently with the RPS, the Commission issued the NOPR that it contends would allow it to determine whether natural gas pipelines' transportation rates are no longer just and reasonable following the reduction in the federal corporate income tax rate implemented in the TCJA. The NOPR proposes to require all pipelines (with narrow exceptions) to complete a new Form No. 501-G, which is designed to evaluate the financial impact of the TCJA and the RPS on pipelines' revenue requirements based on the annual data for the previous year included in the pipelines' filed Form No. 2 or 2-A.[32] Pass-through entities would be required to exclude an income tax allowance when filling out their Form No. 501-G reports.[33] Partnerships not organized as MLPs may submit a statement and supporting documentation to justify a tax allowance.[34]

The NOPR further proposes to require that with the submission of Form No. 501-G, pipelines must select one of four options to address changes to their recovery of income taxes. The four options are (1) to simultaneously make a limited NGA section 4 filing to reduce the pipeline's rates to reflect the decrease in the federal corporate income tax rate pursuant to the TCJA and the elimination of the income tax allowance for MLPs consistent

---

[31] Request for Clarification, Reconsideration and Rehearing of the Interstate Natural Gas Association of America, Docket No. PL17-1-000 (Apr. 16, 2018) ("INGAA Reh'g Request").
[32] NOPR at P 3.
[33] *Id* at P 36.
[34] *Id*.

with the RPS; (2) make a commitment to file a general NGA section 4 rate case or rate settlement before December 31, 2018; (3) file a statement explaining why an adjustment to the pipeline's rates is not needed; or (4) take no further action.[35]

The NOPR refers to the Commission's concurrently-issued NOI,[36] which seeks comments on whether, as a result of the TCJA, the Commission should address changes relating to ADIT and bonus depreciation. The NOI specifically seeks comment concerning adjustment to pipelines' rate base by excess or deficient ADIT, flow-back or recovery of excess or deficient ADIT, excess ADIT that is removed from pipelines' books after the sale or retirement of assets after 2017, and the amortization of excess and deficient ADIT. The NOPR does not propose to take any action on ADIT, but would require pipelines to report in Form No. 501-G their total and amortized ADIT, and other ADIT-related data.[37] The inclusion of the ADIT-related data in Form No. 501-G would be required despite the outstanding matters included within the NOI.

II. Issues Related to an Income Tax Allowance Should Be Removed from the Proposed Rule.

The Commission's proposal to implement the RPS in this proceeding is unsupported and not the product of reasoned decision-making. The Commission should remove the NOPR's proposal to require MLP-owned pipelines to eliminate an income tax allowance from their Form No. 501-G submissions and from the limited section 4 proceedings pipelines may file under the NOPR's option 1. The Commission also should provide for a tax allowance for non-MLP partnerships and other pass-through entities as it

---

[35] *Id*. at PP 27-29,

[36] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223.

[37] FERC Form 501-G, One-time Report on Rate Effect of the Tax Cuts and Jobs Act at 1:30; 2:13-17; 3:21 (attached to the NOPR).

has historically done. The revised final rule should focus only on the rate implications of the corporate income tax reduction in the TCJA without the distraction caused by the interjection of the tax allowance issues. Accordingly, for purposes of the Form No. 501-G, MLP-owned pipelines would reflect in their tax allowance the weighted average rate of income tax applicable to its unitholders, as adjusted for the TCJA. If the income tax allowance issues remain in this proceeding, the Commission should make the clarifications and revisions to the final rule as requested by INGAA herein.

A. The RPS May Not Be Implemented in this Proceeding.

The requests for rehearing of INGAA and other parties demonstrate that the RPS is deficient and should not be applied in this proceeding. The rehearing requests demonstrate that the Commission has failed to justify the proposed rule:

> **The RPS Improperly Abdicates the Commission's Ratemaking Responsibility.[38]** The RPS mischaracterizes *United Airlines* as holding that the MLP tax allowance resulted in a double recovery,[39] when in fact, the court held only that "FERC failed to demonstrate that there is no double-recovery of taxes for partnership, as opposed to corporate, pipelines."[40] The court did not order the Commission to eliminate the MLP tax allowance, but remanded for the Commission to consider "mechanisms for which the Commission can demonstrate

---

[38] *See* INGAA Reh'g Request at 8-10, 14-15; Request for Rehearing or, Alternatively, Clarification of the Association of Oil Pipe Lines at 10-11, Docket No. PL17-1-000 (Apr. 16, 2018) ("AOPL Reh'g Request"); Request for Rehearing and Clarification of EQT Midstream Partners, LP at 5-8, Docket No. PL17-1-000 (Apr. 16, 2018) ("EQM Reh'g Request"); Request for Rehearing of SFPP, L.P. at 4 (Apr. 16, 2018).

[39] *See* RPS at P 23 (discussing the "the fundamental premise of *United Airlines* that an income tax allowance for MLP pipelines leads to a double recovery"); *Id.* at P 24 ("the fundamental conclusion of *United Airlines* that allowing MLP pipelines to include both an income tax allowance and a full DCF ROE in their cost of service leads to a double recovery"); *Id.* at P 32 (stating that pipeline comments in response to Notice of Inquiry were made "[t]o refute the holding in *United Airlines*"); P 35 (discussing "the double-recovery findings of *United Airlines*"); *Id.* at P 43 (asserting that in the *United Airlines* "the court determined that granting MLP pipelines an income tax allowance results in inequitable returns for partners as compared to corporate shareholders because this policy allows partnership pipelines, unlike corporate pipelines, to recover their income tax costs twice.").

[40] *United Airlines*, 827 F.3d at 134.

that there is no double recovery."[41] On remand, the Commission failed to make independent findings concerning the purported double recovery, ignoring evidence submitted by INGAA and other stakeholders that the tax allowance does not result in a double-recovery of income taxes. Instead, the Commission eliminated the MLP tax allowance, without considering any alternatives.[42] This violates the requirement that "policy choices about ratemaking are the responsibility of the Commission — not this Court."[43]

The Commission failed to address INGAA's empirical evidence showing that the MLP tax allowance does not result in a double recovery of income taxes.[44] The Commission failed to respond adequately to evidence submitted by INGAA and other stakeholders demonstrating why the MLP tax allowance does not result in a double recovery. The absence of meaningful responses to INGAA's evidence is a failure to engage in reasoned decision-making,[45] and violates the Commission's duty to "respond[] to significant points raised" in comments.[46]

The Elimination of the MLP tax allowance would unduly harm MLPs, in violation of the Supreme Court's Ruling in *Hope*.[47] As the court recognized in

---

[41] *Id*. at 137. The court stated in *ExxonMobil* and *United Airlines* that it is "'particularly deferential to the Commission's expertise' with respect to ratemaking issues." *United Airlines*, 827 F.3d at 127 (quoting *ExxonMobil*, 487 F.3d at 951)).

[42] RPS at P 43. In announcing the RPS, the Commission refused to properly exercise its discretion. For instance, Commissioner McIntyre stated that the *United Airlines* decision amounted to "very clear marching orders for us as a Commission." Transcript of 1041st Commission Meeting, FERC at 47:17-18 (Mar. 15, 2018). Commissioner McIntyre further stated that the opinion is "helpful because of the clarity it provides and the ***direction that it provides***," and that it "clearly did not allow us wiggle room on remand." *Id.* at 47:19-21 (emphasis added). Likewise, Commissioner LaFleur stated, "I know this was not the answer the companies were hoping for, but I believe ***it was dictated by the court's direction to us***, and the record in the docket." *Id*. at 50:22-25 (emphasis added).

[43] *ExxonMobil*, 487 F. 3d at 953 (citing *AT&T Corp. v. FCC,* 220 F.3d 607, 631 (D.C. Cir. 2000) (noting that "policy judgment[s]" are "for the agency — not this court — to make")). *See also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (court may remand an agency decision to require a reasoned explanation of a decision, but may not "jump[] ahead to resolve the merits of the dispute").

[44] *See* INGAA Rehearing Request at 15-21; AOPL Reh'g Request at 8, 11-13.

[45] *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 639, 642-43 (D.C. Cir. 2010) (remanding because Commission had not adequately responded to petitioner's objections).

[46] *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 & n.58 (D.C. Cir. 1977) (citing *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 392-394 (D.C. Cir. 1973)). *See also Interstate Natural Gas Ass'n of Am. v. FERC*, 494 F.3d 1092, 1096 (D.C. Cir. 2007) (describing Commission's duty to "give reasoned responses to all significant comments in a rulemaking proceeding") (quoting *Int'l Fabricare Inst. v. EPA*, 859 F.2d 156, 188 (D.C. Cir. 1988)).

[47] *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*"Hope*"). *See* INGAA Reh'g Request at 21-22; AOPL Reh'g Request at 7-10; EQM Reh'g Request at 8-10; Request for Clarification or Rehearing and Expedited Action of Dominion Energy, Inc. at 8-10 (Mar. 30, 2018) ("Dominion Reh'g Request"); Request of Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC for Clarification and if Necessary Rehearing at 29-34, 42-43 (Apr. 16, 2018); Request of TransCanada Corporation for Clarification and if Necessary Rehearing at 22-23, Docket No. PL17-1-000 (Apr. 16, 2018) ("TransCanada Reh'g Request").

ExxonMobil, removal of the income tax allowance would place partnership pipelines in a riskier situation than corporate pipelines.[48] The RPS's elimination of the income tax allowance for MLPs, while retaining it for corporations, will result in MLP pipelines earning lower returns than corporate pipelines, despite the fact that the two types of entities perform the same gas transportation function and have "corresponding risks."[49] Elimination of the MLP income tax allowance violates the requirement of *Hope* that "the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks."[50]

The RPS fails to reconcile prior holdings that the income tax allowance is necessary to provide parity between MLP and corporate pipelines.[51] The RPS reverses the Commission's past findings and policy of permitting an income tax allowance for MLP pipelines with almost no explanation or supporting evidence. In upholding the prior Commission policy, the court in *ExxonMobil* determined that the Commission provided a reasoned explanation to support its policy. The court recognized that "it would be inequitable to grant a full income tax allowance to corporations while denying a similar allowance to limited partnerships," and that the income tax allowance was needed for partnerships "to maintain parity with pipelines that operate as corporations."[52] The court in *United Airlines* expressly declined to reverse *ExxonMobil*, and noted that reversal was unnecessary because on remand FERC could revise its policy within the framework approved in *ExxonMobil*.[53]

The RPS reverses the Commission's prior policy, but provides none of the reasoned explanation that was present in support of the 2005 Policy Statement. The RPS does not attempt to reconcile the Commission's previous findings, which were upheld in *ExxonMobil*, that the income tax allowance was *necessary* to "maintain parity" between corporate and partnership pipelines, and its finding in the RPS that

[48] 487 F.3d at 955 (recognizing that "a full income tax allowance is necessary to ensure that corporations and partnerships of like risk will earn comparable after-tax returns.").
[49] *United Airlines*, 827 F.2d at 136 (citing *Hope*, 320 U.S. at 603).
[50] *ExxonMobil*, 487 F.3d at 953 (citing *Hope*).
[51] *See* INGAA Reh'g Request at 22; AOPL Reh'g Request at 13-19.
[52] *ExxonMobil*, 487 F.3d at 953 (citing 2005 Policy Statement, 111 FERC ¶ 61,139, at pp. 61,740, 61,742 (2005)). The court also relied upon the Commission's finding that "the return to the owners of pass-through entities will be reduced below that of a corporation investing in the same asset if such entities are not afforded an income tax allowance on their public utility income." *Id*. at 952 (citing 2005 Policy Statement, 111 FERC at p. 61,742)).
[53] *United Airlines*, 827 F.3d at 137.

the removal of that same income tax allowance is reasonable.[54] This violates the requirements that an agency "demonstrate that it has made a reasoned decision based upon substantial evidence in the record,"[55] which is particularly critical when the agency departs from a prior policy.[56]

The RPS fails to address the multiple forms of MLP ownership and structure.[57] *United Airlines* addressed the tax allowance proposed by a single entity. The RPS has not supported elimination of the tax allowance for other entities. The tax allowance for other entities must be evaluated on a case-by-case basis. The RPS fails to consider the multitude of ownership structures across the pipeline industry, including MLPs and other forms of pass-through entities that are owned, in whole or in part, by tax-paying corporations.[58] The RPS failed to consider that the Commission could have returned to its policy under *Lakehead Pipe Line Co.*, pursuant to which pipelines, including MLPs, could recover an income tax allowance for the portion of income taxes "attributable to its corporate partners," but not with respect to interests held by individual unitholders.[59]

The RPS fails to the extent that it would not permit an income tax allowance regardless of the methodology or proxy group used to derive a pipeline's ROE.[60] The RPS is based on the premise that the DCF methodology leads MLP-owned pipelines to double-recover income taxes, notwithstanding the fact that the

---

[54] *See N.C. Utils. Comm'n v. FERC*, 42 F.3d at 666 (rejecting a FERC order because the Commission did not "sufficiently explain[] its departure from its prior cases"); *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981) ("[A]n agency must provide a reasoned explanation for any failure to adhere to its own precedents.").

[55] *See, e.g.*, *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 639 (D.C. Cir. 2010)) (quoting *Pac. Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004)). *See also ExxonMobil*, 487 F. 3d at 953 (Commission's decision-making must be "reasoned, principled, and based upon the record.") (quoting *So. Cal. Edison Co. v. FERC*, 443 F.3d 94, 98 (D.C. Cir. 2006)).

[56] *See, e.g., BP West Coast Prod., LLC v. FERC*, 374 F.3d 1263, 1302 (D.C. Cir. 2004) (remanding after FERC recanted, without explanation, prior reasoning that rule on retroactive ratemaking did not preclude pipeline's recovery of reconditioning costs); *N.C. Utils. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (rejecting a FERC order because the Commission did not "sufficiently explain[] its departure from its prior cases"); *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981) ("[A]n agency must provide a reasoned explanation for any failure to adhere to its own precedents."). *Cf ANR Pipeline Co. v. FERC,* 205 F.3d 403, 407 (D.C. Cir. 2000) ("An agency may not of course depart from prior policy without explanation. But FERC explained how changed circumstances justified a new policy.").

[57] *See* Request for Clarification of the Master Limited Partnership Association at 5-9, Docket No. PL17-1-000 (Apr. 13, 2018) ("MLPA Rehearing Request"); Supplemental Request for Rehearing and Clarification and Expedited Action of Dominion Energy, *Inc.* at 7- 9, Docket No. PL17-1-000 (Apr. 16, 2018) ("Dominion Supplemental Reh'g Request").

[58] *See* MLPA Rehearing Request at 5 n.17 (noting that, of 60 surveyed MLPs, "corporations own 43.2% of such MLPs equity by value"); Request for Clarification or in the Alternative Rehearing of Kinder Morgan, Inc. Gas Pipelines, Docket No. PL 17-1-000 (Apr. 16, 2018).

[59] *Lakehead Pipe Line Co., L.P.*, 71 FERC ¶ 61,338, at p. 62,314 (1995), *reh'g denied*, 75 FERC ¶ 61,181 (1996). *See* Dominion Supplemental Reh'g Request at 9.

[60] *See* TransCanada Reh'g Request at 34-36.

Commission has recently called into question the results of the DCF methodology. Furthermore, the proxy group at issue in *United Airlines* consisted solely of MLPs.[61] The RPS did not examine whether the use of different proxy groups or different assumptions in the DCF could potentially eliminate the double recovery concerns in *United Airlines*. The Commission should limit its holding on the remand of *United Airlines* to the specific facts applicable to SFPP, and should not preclude other pipelines from including an income tax allowance in their rates.

The RPS fails to the extent it imposes a rule without conducting notice-and-comment rulemaking.[62] As a "policy statement" under the Administrative Procedure Act ("APA"), the RPS is non-binding, and when applying the policy described therein, the Commission must "support the policy just as if the policy statement had never been issued."[63] To the extent the Commission seeks to apply the RPS as a substantive rule, this violates the APA's requirement that substantive rules be implemented through notice-and-comment rulemaking.[64]

The RPS fails to explain its departure from Congressional intent.[65] By providing less favorable rate treatment for MLP pipelines than corporate pipelines, the RPS reverses Congress's intent of encouraging investment through the use of the MLP structure. In 1987, Congress required that major publicly-traded pass-through entities pay taxes directly as if they were corporations, but carved out an exception to this rule for pass-through entities owning "pipelines transporting gas, oil, or products" to encourage investment in natural gas and oil transportation infrastructure.[66] The Commission's policy has previously recognized that the MLP income tax allowance furthers Congress's intent. For instance, in Opinion No. 511 the Commission held that it "again concludes that Congress intended to encourage pipeline investment by authorizing tax incentives for MLPs. To achieve this, it is appropriate to grant regulated MLPs an income tax allowance and equalize the

---

[61] *SFPP*, 162 FERC ¶ 61,228 at P 22 n.48.

[62] Dominion Supplemental Reh'g Request at 3-6; INGAA Reh'g Request at 31-32; Request for Clarification, Reconsideration, and Rehearing of Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP at 11-13, Docket No. PL17-1-000 (Apr. 16, 2018).

[63] *Nat'l Min. Ass'n v. McCarthy*, 758 F.3d 243, 253 (D.C. Cir. 2014) (quoting *Pac. Gas & Electric Co. v. FPC,* 506 F.2d 33, 38 (D.C.Cir.1974)). *See also Pac. Gas & Elec.*, 506 F.2d at 38-39 ("An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.").

[64] *See Am. Pub. Gas Ass'n v. FPC*, 498 F.2d 718, 722 (D.C. Cir. 1974)

[65] AOPL Reh'g Request at 14-19; Dominion Reh'g Request at 11-12 (Mar. 30, 2018); EQM Reh'g Request at 8-10.

[66] 26 U.S.C. § 7704(c)(2) states that an exception from the general rule stated in § 7704(a) where, in any taxable year, 90 percent or more of the publicly traded partnership's gross income consists of "qualifying income." Section 7704(d)(1)(E) defines qualifying income to include "income and gains derived from the . . . transportation (including pipelines transporting gas, oil or products thereof) . . . of any mineral or natural resource."

return of the MLP and the corporation at the entity level"[67] The RPS fails to reconcile the Commission's previous policy determinations with its new policy of precluding MLP pipelines from recovering an income tax allowance. Given that Congress implemented MLP tax policies specifically to incentivize investment into natural gas and oil transportation infrastructure,[68] the Commission's failure to implement Congress' intent is a failure of reasoned decision-making.

B. The Commission Should Remove the Requirement That MLP and Other Partnership Pipelines Exclude an Income Tax Allowance from Their Form No. 501-G Reports.

The NOPR proposes to implement the RPS by requiring MLP pipelines to eliminate a tax allowance (1) when submitting Form No. 501-G, and (2) in exercising the option to make a limited section 4 filing to reduce their rates. For the reasons set forth in the requests for rehearing of INGAA and other parties, and provided above, the Commission has not justified the RPS. To require a company to comply with a policy statement, the Commission must "support the policy just as if the policy statement had never been issued."[69] The NOPR proposes to implement the RPS by requiring MLP-owned pipelines to exclude the income tax allowance from their Form No. 501-G filings without any independent justification to support its position.[70] A tax allowance of zero would unjustifiably increase the "Indicated Rate Reduction" on line 33 of page 1 of Form No. 501-G, placing MLP-owned pipelines at an immediate disadvantage in a future rate filing. The Commission does not support this requirement with any analysis, but instead relies

---

[67] Opinion No. 511, 134 FERC ¶ 61,121 at P 265. *See also* Opinion No. 511-A, 137 FERC ¶ 61,220 at P 314 ("[T]here is no doubt that Section 7704 of the [Internal Revenue Code] was to provide that incentive for certain types of business formats to encourage investment.").

[68] This decision to disfavor MLP-owned pipelines is also contrary to White House policy of incentivizing infrastructure investment. *See* White House Legislative Outline for Rebuilding Infrastructure in America (Feb. 12, 2018), https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf.

[69] *Nat'l Min. Ass'n v. McCarthy*, 758 F.3d 243, 253 (D.C. Cir. 2014) (quoting *Pac. Gas & Electric Co. v. FPC,* 506 F.2d 33, 38 (D.C.Cir.1974)). *See also Pac. Gas & Elec.*, 506 F.2d at 38-39 ("An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.").

[70] NOPR at P 26.

upon the non-binding RPS. The Commission should remove implementation of the RPS from the proposed rule. Additionally, the Commission should provide for a tax allowance for non-MLP partnerships and other pass-through entities in Form 501-G as it has done historically.

C. The Commission Should Clarify that All Pipelines May Propose an Income Tax Allowance in Future Rate Proceedings.

Because the Commission has not justified the elimination of the income tax allowance for MLP pipelines, the Commission should clarify that all pipelines, including MLPs and other pass-through entities, may propose an appropriate income tax allowance in future rate case proceedings. The D.C. Circuit has held that "just and reasonable" rates are "rates yielding sufficient revenue to cover all proper costs***, including federal income taxes***, plus a specified return on invested capital."[71] Consistent with this requirement and the D.C. Circuit's holdings in *ExxonMobil* and *United Airlines*, the Commission should clarify that all pipelines are permitted to propose a tax allowance in future section 4 rate proceedings provided they demonstrate (1) an "'actual or potential' income tax liability"[72] and (2) that no double recovery results from the income tax allowance.[73] This clarification would recognize the diverse circumstances among pipelines and would comply with the requirement that partnership and corporate pipelines be treated commensurately.

The proposed clarification would also treat MLP pipelines in the same manner as non-MLP pass-through entities, which the Commission will allow to propose an income

[71] *City of Charlottesville v. FERC,* 774 F.2d 1205, 1207 (D.C. Cir. 1985) (emphasis added).
[72] *See ExxonMobil*, 487 F.3d at 954.
[73] *United Airlines*, 827 F.3d at 134 (acknowledging *ExxonMobil's* holding that it "may be reasonable for FERC to grant a tax allowance to partnership pipelines," but FERC had "failed to demonstrate that there is no double-recovery of taxes for partnership [pipelines]").

tax allowance in a rate case.[74] The Commission should apply the same requirements to MLP pipelines as it does to non-MLP pass-through entities, allowing all pipelines to propose an income tax allowance in a rate case. The Commission also should clarify that as a non-binding statement of policy, the RPS does not preclude pipelines, including those owned by MLPs, from proposing and justifying the inclusion of a tax allowance in their future rate cases.

D. The Commission Should Not Require Non-MLP Pipelines to Provide Additional Justification to Retain an Income Tax Allowance.

The Commission should clarify its policies concerning non-MLP pass-through entities' recovery of an income tax allowance before it requires pipelines to file Form No. 501-G reports or pursue any of the NOPR's four options. In the event income tax allowance issues remain part of the final rule, the Commission should specifically clarify that non-MLP pass-through entities will not be required to justify a tax allowance when implementing the requirements of the proposed rule.

The RPS provides that the Commission will address possible double recoveries of income taxes by non-MLP partnerships and other pass-through business forms "as those issues arise in subsequent proceedings,"[75] but "Form No. 501-G assumes a federal and state income tax expense of zero."[76] The NOPR acknowledges that for some pipelines organized as pass-through entities, there may be reasons why a tax allowance may be justified,[77] but improperly places the burden of justifying that income tax allowance upon the pass-through entity. The NOPR would permit "non-MLP partnership or pass-through business forms"

---

[74] NOPR at PP 24 n.43, 36. *See also* proposed § 154.404(a)(3).
[75] Revised Policy Statement at PP 3, 8, 45.
[76] NOPR at P 36.
[77] *Id.* at P 28.

to seek an income tax allowance in a limited section 4 proceeding filed pursuant to option 1,[78] but the NOPR would require a non-MLP pass-through pipeline to "justify why it should continue to receive an income tax allowance."[79] It is uncertain whether the Commission will permit such proposed tax allowances as part of a limited section 4 rate reduction.

Partnerships and other pass-through structures have been an efficient structure for corporate entities' allocation of risk and deployment of capital to support infrastructure development for decades. These structures have been used to develop major off-shore pipelines such as High Island Offshore System, Stingray Pipeline and Sea Robin Pipeline, as well as major onshore interstate pipelines like Rockies Express Pipeline, Midcontinent Express Pipeline, and Fayetteville Express Pipeline. At a minimum, the Commission should clarify that non-MLP pass-through entities that are owned, in whole or in part, by tax-paying corporate partners may, as they have always been permitted to do, continue to recover an appropriate income tax allowance.

Income tax allowances are essential, and just and reasonable, for pipelines organized using pass-through structures whose earnings are subject to an income tax obligation of the parent C-corporation. For corporate-owned partnership pipelines, the income tax allowance ensures that the actual ROE to shareholders is 100 cents on the dollar. Neither *United Airlines* nor the RPS provides any reason to require such pipelines to provide additional justification to continue to recover an income tax allowance. The Commission's requirement that a non-MLP pass-through pipeline provide additional

[78] *Id.* at PP 24 n.43, 36. The RPS does not address non-MLP pass-through entities, but provides that it will address the application of *United Airlines* to those entities "as those issues arise in subsequent proceedings." RPS at P 3.
[79] NOPR at P 36.

justification to retain an income tax allowance improperly flips the burden under NGA section 5 onto the pipeline.[80]

The assumption of a zero tax allowance for certain partnership pipelines will also lead to inaccuracies in these pipelines' Form No. 501-G reports. This unsupported assumption could lead customers and market observers to conclude that partnership pipelines are over-earning. The Commission should remove this assumption from Form No. 501-G. Non-MLP pass-through pipelines will be unlikely to pursue the option of filing a limited section 4 rate case if they face additional risk regarding the rate treatment of their income tax allowance. The Commission should resolve this issue before requiring pipelines to select one of the four options.

A prohibition against corporate-owned, non-MLP pass-through entities continuing to recover an income tax allowance would fail to meet the Commission's obligation to ensure "commensurate . . . returns on investments" for equity owners as required under *Hope*.[81] The NOPR would permit a pipeline organized as a C-corporation to recover a tax allowance, but possibly preclude a non-MLP pass-through entity subsidiary of the same C-corporation from recovering an income tax allowance, despite the parent C-corporations owing similar tax liabilities on both pipelines. This disparate treatment could occur even though a C-corporation owning a non-MLP pass-through pipeline has the same ultimate tax liability as if the pipeline itself is a C-corporation, because the income from the non-

[80] *See Consumers Energy Co. v. FERC,* 226 F.3d 777, 781 (6th Cir. 2000) (rejecting Commission order that a Hinshaw pipeline file "a petition for rate approval to justify its current rate or to establish a new maximum rate."); *Pub. Serv. Comm'n of N.Y. v. FERC*, 866 F.2d 487, 490 ((D.C. Cir. 1989) (remanding Commission requirement that pipeline make section 4 filing in anticipation that the pipeline's rate would no longer be just and reasonable as rate base declined, holding that "FERC's attempted relocation of the expected dispute from § 5 to § 4 would shift the burden of proof from the Commission to the company.").
[81] 320 U.S. 591 at 603.

MLP pass-through subsidiary pipeline is included in the calculation of the parent C-corporation's federal tax liability.

The Commission has long recognized, and the courts have affirmed, calculation of pipelines' income tax allowance on a "stand-alone" basis, without reducing it to reflect tax savings resulting from use of a consolidated corporate return.[82] There is no legitimate justification for this disparate treatment of two similarly situated owners.[83] The Commission should clarify that non-MLP pass-through entities need not provide any additional justification to continue to recover an income tax allowance.

III. The Commission Must Carefully Consider the Timing of Its Actions Addressing the Rate Impacts of the TCJA to Minimize Uncertainty and Promote Rate Stability.

A. The Commission Should Resolve Issues Related to ADIT Before Issuing a Final Rule in This Proceeding.

The NOPR states that the reduction in the corporate income tax rate will result in a reduction in ADIT on pipelines' books.[84] The Commission has sought comment on how it should address changes related to ADIT in a separate NOI, issued in Docket No. RM18-12-000,[85] and does not propose to take any action on ADIT in this proceeding.[86] The Commission has a significant body of case law involving ADIT and applying that law, and related regulations under the Internal Revenue Code, to the circumstances of a specific

[82] *See, e.g., City of Charlottesville*, 774 F.2d at 1216 ("The point is that it is an expense of the consolidated company caused by the jurisdictional activities and thus properly assessed against the ratepayers.")

[83] Entitling non-MLP pass-through entity pipelines an income tax allowance to the extent their units are held by C-corporations would reflect the Commission's previous policy under *Lakehead*. As noted above, *Lakehead* was addressed in *BP West Coast* where the D.C. Circuit "left open to the Commission the option of developing a superior rationale to support a continued federal income tax allowance solely for corporate partners." *SFPP, L.P.*, 111 FERC ¶ 61,334 at P 21 (2005).

[84] NOPR at P 7.

[85] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (2018).

[86] NOPR at P 31.

pipeline is essential before any conclusion could be reached regarding whether that pipeline requires an adjustment to its existing rates. INGAA intends to file comments on the merits of ADIT issues in response to the Commission's NOI, and INGAA anticipates that its members also will file separate comments in that proceeding.

The Commission should complete the rulemaking process in Docket No. RM18-12 before or at the same time it issues a final rule in the instant proceeding. Questions surrounding the treatment of ADIT are complex and nuanced, requiring thoughtful and deliberate analysis to arrive at a reasoned decision that withstands scrutiny. The Commission's final rule in this proceeding, including any decision to move forward without completing the ADIT review, must meet that standard. Handling these two issues on separate regulatory tracks will create uncertainty and will not provide the Commission the type of clarity it is seeking in the Form No. 501-G. Bifurcation of these overlapping issues further may require supplemental or revised filings at a later date, adding to the burden of all pipelines and Commission staff in complying with a final rule. Proceeding separately also may discourage pipelines from selecting the option to file a limited section 4 rate case, because they could still face additional risk regarding the ultimate rate treatment of ADIT in a subsequent proceeding. Pipelines and shippers, collectively, would be less likely to enter into an uncontested settlement until ADIT issues are resolved.

B. Pipelines That Commit to File a Pre-packaged Settlement or General Section 4 Rate Case Should Be Granted Additional Time for Filing a Pre-packaged Settlement or General Section 4 Rate Case.

Pipelines that commit under option 2 to file a pre-packaged settlement or a general NGA section 4 rate case should be given additional time beyond the NOPR's proposed deadline of December 31, 2018 within which to make such a filing. The currently-

proposed deadline does not give pipelines sufficient time after the filing of Form No. 501-G to negotiate uncontested rate settlements, and, if such negotiations do not succeed, to prepare general rate cases.[87] This is particularly true for the later of the four groups that must file the Form No. 501-G either 84 days or 112 days from the final rule's effective date. These pipelines would be subject to an extremely compressed timeframe to negotiate an ***uncontested*** settlement of all rate issues, or to file a full section 4 rate case by the end of 2018, or do both.

The current timeframe is unrealistic and would pose an obstacle to settlement negotiations, in contrast to the Commission's longstanding policy of encouraging settlements.[88] Pipelines are aware of the possibility that they may be unable to reach a settlement with all their shippers. This possibility increases if the parties' negotiations are limited by artificial deadlines. The short time period between the filing of Form No. 501-G reports and the deadline for filing an uncontested settlement or rate case incentivizes pipelines to forego any negotiations that would consume their limited resources, and to use those resources to prepare full section 4 rate cases within the deadline imposed by the NOPR. This result would adversely impact shippers, and force the filing of general section 4 rate cases that may have otherwise been pre-settled if there was adequate time. The Commission should avoid creating overly-compressed timeframes that would impede the pre-settlement of general rate cases.

Expecting a pipeline to prepare a section 4 rate case filing within only a few months is not realistic. The preparation of a rate case requires contracting with experts, lining up necessary staff and other internal resources, and providing both with adequate time to

---

[87] This is particularly true if the NOI is not concluded at the same time an order is issued related the NOPR.
[88] *See Tenn. Gas Pipeline Co*., 20 FERC ¶ 61,096, at pp. 61,206-207 (1982).

prepare a case. The rate case preparation process is resource-intensive, which is a particular issue for smaller pipelines without a large rate staff, and limited experts available with whom to work to prepare testimony for a case. These issues may further push back timetables for submission of section 4 cases.

Rather than imposing a fixed December 31, 2018, filing deadline upon all pipelines that elect option 2, the Commission should allow pipelines to file pre-packaged uncontested settlements or rate cases up to 180 days following their deadline for filing Form No. 501-G. The Commission should also permit parties to request a delay in the filing deadline for pre-packaged uncontested settlements or rate cases if publicly-announced settlement discussions are underway but parties have not yet resolved all issues.[89] Allowing pipelines electing option 2 up to 180 days after their Form No. 501-G filing deadline to file a pre-packaged uncontested settlement or general section 4 rate case is necessary given the substantial time and resources needed to file or pre-settle a rate case proceeding.

IV. Pipelines Should Not Be Required to Submit Form No. 501-G Reports if the Reports Will Not Lead to Rate Modifications.

A. Pipelines Whose Rates Are Governed by Settlements with Rate Case Filing Moratoria Should Not Be Required to File Form No. 501-G.

The Commission should not require pipelines to file Form No. 501-G if their rates are governed by rate case settlements that include rate case filing moratoria. Even if the Commission were to properly revise Form No. 501-G, the Form would serve no purpose for these pipelines. The Commission stated that Form No. 501-G is designed to inform stakeholders and the Commission about the impact of the TCJA on pipeline rates, which

[89] The Commission should similarly extend its commitment not to initiate an NGA section 5 investigation of a pipeline's rates prior to the extended date. NOPR at P 47.

they may use in determining whether to initiate NGA section 5 complaints or investigations.[90] As the Commission acknowledges in the NOPR, most shippers on pipelines with rate case moratoria are precluded under their Commission-approved settlement agreements from seeking a rate modification under NGA section 5.[91] Pursuant to the terms of pipeline settlement rate moratoria, the pipelines themselves are likely to be precluded from electing option 1 or 2 to initiate any type of rate change during the settlement moratorium. The NOPR specifically recognizes that the Commission "generally does not disturb a settlement during a rate moratorium."[92] Consistent with the Commission's expressed intent to honor contracts and rate moratoria, it should eliminate the requirement for pipelines whose rates are subject to rate moratoria from the 501-G requirement as part of a final rule.

The Commission has already proposed in the NOPR to exempt certain pipelines from filing a Form No. 501-G report in cases where filing the report would not be useful. Specific exemptions are provided for those pipelines that file general NGA section 4 rate cases or pre-packaged uncontested rate settlements before the Form No. 501-G filing deadline, and pipelines already being investigated under NGA section 5.[93] Pipelines with rate case moratoria are positioned similarly to these pipelines – their Form No. 501-G reports will not lead to a rate modification. The NOPR already proposes to permit these pipelines to explain under option 3 that their rate case moratoria preclude rate

---

[90] NOPR at PP 26, 32.
[91] *Id.* at PP 13, 28, 42 n.61.
[92] *Id*. at P 49 (citing *Iroquois Gas Transmission Sys. L.P.*, 69 FERC ¶ 61,165, at 61,631 (1994); *JMC Power Projects v. Tenn. Gas Pipeline Co.,* 69 FERC ¶ 61,162 (1994), *reh'g denied*, 70 FERC ¶ 61,168, at p. 61,528 (1995), *aff'd*, *Ocean States Power v. FERC*, 84 F.3d 1453 (D.C. Cir. 1996)).
[93] NOPR at P 26 & n.45.

adjustments.[94] Pipelines should not be required to go through the exercise of compiling Form No. 501-G filings that will not lead to rate changes during the moratorium periods. It would be an irrational outcome if a pipeline that filed a pre-packaged uncontested rate settlement prior to issuance of the NOPR would be required to file a Form No. 501-G, but a pipeline that filed a pre-packaged uncontested settlement the day after the NOPR was issued would not.

Pipelines' future Form No. 2 reports will allow shippers to evaluate the justness and reasonableness of pipelines' rates in light of the TCJA. Consistent with current practice for undertaking section 5 proceedings, shippers and the Commission can review the Form No. 2 data of pipelines with rate moratoria to support potential section 5 proceedings after the moratoria expire.[95] Until then, the Commission should not require the affected pipelines to submit additional data.

B. Pipelines Should Not Be Required to Submit Form No. 501-G if their Rate Case Settlements Address Changes to the Federal Corporate Income Tax Rate.

The Commission should also exempt from the Form No. 501-G filing requirement pipelines that recently filed rate case settlements that addressed actual or potential tax changes. If parties agreed upon settlement terms that address the possibility of modifications in the federal corporate income tax rates, or changes in the Commission's

---

[94] NOPR at P 49. Pipelines and shippers have specifically negotiated rate case moratoria to provide rate certainty and stability during the moratorium periods. The Commission has stated that it is reluctant to revise settlements because modifications to individual terms of the settlement could "upset the delicate balance achieved in the settlement." *El Paso Natural Gas Co*., 54 FERC ¶ 61,316, at p. 61,915, *order on reh'g*, 56 FERC ¶ 61,290, at p. 62,147 (1991). *See also Iroquois Gas Transmission Sys. L.P.*, 69 FERC ¶ 61,165, at p. 61,631 (1994).

[95] *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 4 ("A section 5 complaint may rely on Forms 2, 2-A, and 3-Q financial data to support a complaint."), *order on reh'g*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *petition for review granted sub. nom*, *Am. Gas Ass'n v. FERC*, 583 F.3d 14 (D.C. Cir. 2010).

policy concerning recovery of income taxes, their settlements should not be disturbed, and those pipelines should not be burdened with the need to submit Form No. 501-G.

C. The Commission Should Exempt Pipelines that File General Section 4 Rate Cases or Pre-Packaged Uncontested Rate Settlements after the Enactment of the TCJA from Filing Form No. 501-G.

The NOPR proposes to exempt from the Form No. 501-G filing requirement pipelines that file general NGA section 4 rate cases or pre-packaged uncontested rate settlements after the NOPR was published in the Federal Register on March 26, 2018, and before the deadline for filing Form No. 501-G.[96] The Commission should apply this same exemption to any pipelines that filed a pre-packaged uncontested rate settlement after the enactment of the TCJA but before the NOPR was published in the Federal Register on March 26, 2018, rather than only pipelines that filed settlements after the NOPR's publication. The signing of the TCJA placed pipelines and stakeholders on notice of the reduction in the federal corporate income tax rate. Settlements filed after the new income tax rates went into effect take into consideration the TCJA's impact on cost of service, and pass the benefit of that reduction onto ratepayers. Such settlements filed after enactment of the TCJA, but prior to March 26, 2018, pass onto ratepayers the same benefit of the reduction in the corporate income tax resulting from the TCJA as a pre-packaged uncontested settlement filed after issuance of the NOPR.

D. Pipelines That Commit or Are Required by Settlement to File a General NGA Section 4 Rate Proceeding Should Not Be Required to File Form No. 501-G.

The Commission should also expand the exemption from submitting Form No. 501-G to any interstate pipeline that makes a commitment pursuant to option 2, or is required

[96] NOPR at P 26. The NOPR also proposes to exempt pipelines already being investigated under NGA section 5 from filing Form No. 501-G. *Id.* P 26 n.45.

by settlement, to file a general NGA section 4 rate case or an uncontested settlement in the near future.[97] When a pipeline proposes to increase its rates pursuant to NGA section 4, the pipeline must file a complete cost of service analysis.[98] The schedules under section 4 of the NGA, which require pipelines to provide a comprehensive and complete analysis of the pipeline's cost of service, will allow shippers to evaluate the justness and reasonableness of pipelines' rates in light of the TCJA. Consistent with the intent of option 2, pipelines should not be required to go through the exercise, and potential prejudice, of compiling Form No. 501-G submissions when they have agreed or are required by settlement to file a section 4 proceeding in which stakeholders will receive a more complete picture about the reflection of the TCJA into pipeline rates through the NGA section 4 process in the near future.

E. Pipelines that Elect to Make Limited NGA Section 4 Filings Should Not Be Subject to NGA Section 5 Cases for a Three-Year Period and Should Not Be Required to File Page 3 of Form No. 501-G.

The Commission should clarify that pipelines that choose to file limited NGA section 4 rate cases will not be subject to separate section 5 proceedings to further amend their rates for a three-year period. Pipelines electing to immediately reduce rates pursuant to the limited section 4 filing provision of option 1 will be implementing rate decreases sooner than would be required in a section 5 rate proceeding. Absent a firm assurance that they will not immediately be dragged into an additional section 5 proceeding and face the potential for further rate reductions, pipelines will have no incentive to select to file the limited section 4 cases permitted under option 1. The Commission should further clarify

[97] Pipelines electing option 2 would provide a statement of its commitment to file either a pre-packaged uncontested settlement or, if that is not possible, a general NGA section 4 rate case.
[98] *See, e.g.*, 18 C.F.R. §§ 154.312, 154.313 (2017), for the comprehensive list of Schedules that the Commission requires pipelines to file to justify a rate increase.

that a pipeline's filing of a limited section 4 proceeding under option 1 will not affect the obligations of a pipeline or its shippers under existing rate settlements – for instance, commitments to file cost and revenue studies – unless such obligations are further modified by settlement.

The NOPR explains that for pipelines choosing to take the limited section 4 approach of option 1, the Commission will only consider protests directly related to the reduced income tax rates and elimination of the MLP income tax allowance.[99] Since protests must be directly related to the reduced income tax rates and elimination of the MLP income tax allowance, the Commission should clarify that page 3 of FERC Form No. 501-G should not be required for pipelines that elect option 1. Page 3 of FERC Form No. 501-G provides information unrelated to the reduction of income tax rates and elimination of MLP income tax allowance. This information would serve no purpose and would not lead to additional rate modifications under option 1. That information could be used as the basis for a complaint by shippers seeking to initiate a Section 5 proceeding. Pipelines that select option 1 and grant shippers prompt relief should not be burdened with the risk of further rate proceedings.

V. Additional Issues

A. Procedural Issues

1. *Pipelines' Form No. 501-G Submissions Should Not Be Docketed or Made Subject to Interventions and Protests.*

The Commission proposes in the NOPR to assign each pipeline's Form No. 501-G filing an "RP" docket number, to notice the filing, and to permit shippers to intervene and

[99] NOPR at P 42.

protest.[100] The Commission should remove this proposal because it is contrary to the NOPR's characterization of Form No. 501-G as an informational filing being submitted pursuant to sections 10 and 14 of the NGA.[101] The Commission does not assign docket numbers to Form No. 2 and other similar informational filings, nor does it subject these filings to intervention and protest. The NOPR provides no justification for modifying this practice solely for the Form No. 501-G reports. Given that most of the information in the Form No. 501-G "is to be taken directly from the respondent's 2017 FERC Form Nos. 2 or Form 2-A without modification,"[102] there is no stated or reasoned basis for the proposed different treatment between the Form No. 501-G and Form No. 2 reports. There is no statutory predicate for the treatment of the Form No. 501-G as a rate filing pursuant to NGA Section 4 or 5.

The proposal to docket and allow protests to Form No. 501-G filings would ignore that these filings are neither NGA section 4 proposals offered by the pipelines for the Commission's approval, nor responses to the Commission acting under NGA section 5. The filings are made only to provide specific information in the form required by the Commission. The NGA provides that pipelines do not bear the burden of justifying their existing rates. A party seeking a change to existing rates has the burden of demonstrating that the existing rates are unjust and unreasonable.[103] The proposal to allow shippers to protest the pipelines' Form No. 501-G reports incorrectly suggests that these informational compliance filings either are voluntary proposals being advanced by the pipelines under NGA section 4 or filings in response to the Commission acting under NGA section 5.

[100] *Id.* at P 29.
[101] *Id.* at P 3.
[102] *Id.* at P 33 (footnote omitted).
[103] *See "Complex" Consol. Edison Co. of N.Y. v. FERC*, 165 F.3d 992, 1001 (D.C. Cir. 1999).

The proposal to docket and allow protests to Form No. 501-G filings is wholly unnecessary. The Commission explained in the NOPR that, like the Form No. 2 report, shippers can use Form No. 501-G as a tool to assist their determination of whether to initiate NGA section 5 complaints requesting reductions in pipelines' rates, in the event the pipeline selects options 3 or 4.[104] If a shipper seeks a reduction in a pipeline's rates as a result of the pipeline's Form No. 501-G filing, the shipper should file a complaint seeking to initiate an NGA section 5 investigation, and satisfy its *prima facie* evidentiary burden as required by NGA section 5.

The proposal to docket and allow protests of pipelines' Form No. 501-G filings would be inefficient and a distraction of resources. By permitting shippers to intervene and protest these filings, the Commission will create a procedure that confuses both the nature of filings being made and who has the burden of proof. Allowing protests to these informational compliance filings will compel pipelines to submit comments replying to any protests to prevent shippers or trial staff from claiming waiver in future proceedings. This type of ad-hoc procedure would burden the Commission's resources without serving any practical end. The informational Form No. 501-G filings could turn into de facto rate proceedings despite a lack of authority for initiation of such actions under NGA section 4 or 5. This would interfere with the orderly disposition of the actual rate proceedings that will follow the Form No. 501-G filings. Pipelines' informational filings made in Form No. 501-G should not be placed in RP dockets or made subject to intervention and protest

[104] NOPR at P 41. *See also*, *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 4 (2008) ("A section 5 complaint may rely on Forms 2, 2-A, and 3-Q financial data to support a complaint."), *order on reh'g*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *petition for review granted sub. nom*, *Am. Gas Ass'n v. FERC*, 583 F.3d 14 (D.C. Cir. 2010).

because they are not pipeline-initiated filings pursuant to NGA section 4; instead, like Form No. 2 reports, they should be accepted as informational filings.

2. *The Commission Should Explicitly Clarify that Pipelines Do Not Forfeit Any Rights in Future Rate Proceedings by Making the Form No. 501-G Filing.*

The Commission should make it clear that pipelines will not be prejudiced in future rate proceedings by filing Form No. 501-G. The Commission should explicitly clarify that pipelines' submission of Form No. 501-G reports does not affect the burden of proof in future NGA rate proceedings under either section 4 or 5 and that a shipper that relies on Form No. 501-G data to initiate an NGA section 5 complaint still carries the statutory burden of proving that the pipeline's existing rates are not just and reasonable, and proposing an alternative rate that is just and reasonable.[105]

The Commission proposes in the NOPR to require the submission of Form No. 501-G pursuant to its information-collecting authority under NGA sections 10 and 14.[106] The Commission should clarify that pipelines' submissions of Form No. 501-G reports are not elections or admissions that are binding in subsequent rate proceedings under NGA sections 4 or 5. Form No. 501-G limits pipelines' options when completing the form, for instance, in selecting a capital structure,[107] entering an indicative 10.55% ROE, and making other adjustments to data from Form Nos. 2 or 2-A and 10-K.[108]

The Commission should clarify that a pipeline's utilization of the limited options permitted by Form No. 501-G does not in any way constrain a pipeline's position or prevent

---

[105] *See Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 187 (D.C. Cir. 1986); *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993).
[106] NOPR at P 3.
[107] NOPR at P 35.
[108] NOPR at P 39.

the pipeline from submitting different data or assumptions in future rate proceedings, including section 5 proceedings commenced in part based on the data submitted in Form No. 501-G. Completing Form No. 501-G should not be construed to mean that a pipeline has accepted or should be required to accept any methodology underlying the form.

The Commission should similarly clarify that if a pipeline does not specifically object to an instruction in Form No. 501-G, that pipeline is not precluded from filing different data or taking a contrary position in a subsequent rate proceeding, nor does the promulgation and submission of Form No. 501-G create a presumption that the assumptions embedded in that form are just and reasonable.

B. The Proposal to Require Pipelines to Use an Indicative 10.55% ROE in Their Form No. 501-G Filings Is Arbitrary and Capricious.

The NOPR's proposal to require pipelines to use an indicative ROE of 10.55% in their Form No. 501-G filings is arbitrary and capricious and does not reflect reasoned decision-making.[109] The Commission should clarify that the proposed indicative ROE of 10.55% is not intended to reflect the just and reasonable ROE for any particular pipeline.

The NOPR proposes to use a 10.55% ROE based on the "last litigated ROE" in *El Paso Natural Gas Co.*, which was based on a test period from 2010-2011 and is now outdated.[110] The Commission has not shown that an ROE percentage generated by financial data from 2010-2011 based on an *El Paso* proxy group is currently representative for any pipeline, let alone for all pipelines. Furthermore, the Court of Appeals has yet to

[109] 5 U.S.C.A. § 706(2)(A). *See Williams Gas Processing-Gulf Coast Co., L.P. v. FERC*, 475 F.3d 319, 326 (D.C. Cir. 2006); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 57 (1983).
[110] NOPR at P 34 (citing *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016)).

rule on whether 10.55% was a just and reasonable ROE for El Paso in that proceeding.[111] The Commission has not attempted to demonstrate that the ROE is appropriate for any other pipelines that operate in different markets and face different competitive and/or market risks.[112] The natural gas market has changed significantly since 2011, due in part to an increase in competition and a collapse of basis differentials across most of the country, generally reducing the economic value of interstate pipeline capacity.

Application of a 10.55% ROE in a rate case today would violate *Hope's* requirement that a pipeline's return "be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[113] The Commission's recent actions have already affected the pipeline industry's ability to attract capital, as demonstrated by the dramatic decline in pipelines' market caps since the issuance of the NOPR and RPS.[114] The Commission should clarify that the 10.55% ROE is to be used only for the purposes of completing Form No. 501-G, and is not an indicative ROE or reflective of the ROE that would be determined in a general rate case proceeding.

---

[111] Appeals of Opinion Nos. 528 and 528-A are being held in abeyance by the D.C. Circuit pending further rehearing by the Commission. *See S. Cal. Gas Co. v. FERC*, Case No. 16-1122 (D.C. Cir. Sept. 16, 2016) (order holding appeal in abeyance). The Commission's rulings concerning an appropriate ROE for EPNG will be subject to appeal after a final order in the EPNG proceeding is issued.

[112] Use of a single ROE figure is also unfair to MLPs in particular, which should have higher ROEs than C Corporations given their loss of the tax allowance should the RPS stand.

[113] 320 U.S. at 603.

[114] *See* Stephen Cunningham, et al., "Pipeline Stocks Plunge After FERC Kills Key Income-Tax Allowance," Bloomberg (Mar. 15, 2018), https://www.bloomberg.com/news/articles/2018-03-15/pipeline-stocks-plunge-after-ferc-kills-key-income-tax-allowance. *See also* Dominion Reh'g Request at 9-10 (Mar. 30, 2018) (estimating that in the ten trading days following issuance of the RPS, MLPs lost nearly $30 billion in market value).

C. The Commission Should Eliminate the Requirement to Submit an Alternative Capital Structure and Permit Pipelines to Utilize the Capital Structures from FERC Form No. 2 or 2-A When Submitting Form No. 501-G.

The NOPR generally proposes to require pipelines, when completing Form No. 501-G, to list capital structures that the pipelines include in their FERC Form No. 2 or 2-A. The NOPR states that if a pipeline's Form No. 2 or 2-A data does not meet the requirement of Opinion No. 414-A, then the pipeline must provide alternative data that reflects either its parent company's capital structure or a hypothetical capital structure.[115] The NOPR's requirement for a pipeline to provide an alternative capital structure does not accurately reflect that the Commission's capital structure policy must be applied on a case-by-case basis, and improperly places the burden on the pipeline to propose an alternative capital structure in violation of NGA section 5.

The NOPR provides an overly-restrictive interpretation of Opinion No. 414-A, stating that, "[i]n approving the capital structure to be used for ratemaking purposes, the Commission uses an operating company's actual capital structure if the operating company (1) issues its own debt without guarantees, (2) has its own bond rating, and (3) has a capital structure within the range of capital structures approved by the Commission."[116] The NOPR ignores that a key consideration of the Commission's capital structure policy is to "provide sufficient flexibility to permit it to evaluate individual pipeline circumstances."[117] The Commission has further noted that "an appropriate capital structure for a pipeline

[115] NOPR at P 35 (citing *Transcontinental Gas Pipe Line Corp*., Opinion No. 414-A, 84 FERC ¶ 61,084, at pp. 61,413-61,415, *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. N.C. Utils. Comm'n v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7, 2000) (per curiam)).
[116] NOPR at P 35.
[117] Opinion No. 414-A at p. 61,413.

company can fall within a very broad range, depending on the record in a particular case."[118] The policy described in Opinion No. 414-A is a starting point for determination of a pipeline's appropriate capital structure, but as applied, the Commission performs a "case-by-case analysis based on the facts in each case whether the capital structure and resulting cost of capital is just and reasonable."[119]

The NOPR fails to recognize that pipelines' individual circumstances may require a different capital structure based on particular facts not considered in Opinion No. 414-A. Pipelines appropriately include such capital structures in their Form Nos. 2 or 2-A that reflect their specific facts and circumstances. The NOPR appears to pre-judge the justness and reasonableness of the capital structures included in Form Nos. 2 or 2-A by requiring pipelines to propose a different capital structure from the ones reported in Form Nos. 2 or 2-A. The proposed requirement would force the pipeline to submit a capital structure that it does not support. The Commission should remove the requirement that the pipeline confirm that its capital structure conforms to the Opinion No.414-A three-prong test and, if not, that it submit an alternative capital structure. The Commission should instead permit pipelines to utilize the capital structures set forth in their Form Nos. 2 or 2-A.

This proposed requirement to provide an alternative capital structure improperly places upon the pipeline the Commission's burden of proof under NGA section 5. It is well-established that "[u]nder section 5, the Commission must first establish that the proposed or existing rate is unjust and unreasonable. It is only after this antecedent

---

[118] *Id.* at p. 61,419.
[119] *El Paso Nat. Gas Co.*, 139 FERC ¶ 61,095, P 95 (2012), *order on reh'g*, 152 FERC ¶ 61,039, P 33 (2015) (reiterating that in reviewing proposed capital structures, the Commission "makes its analysis on a case-by-case basis").

showing has been made that the Commission properly can illustrate that its alternative rate proposal is both just and reasonable."[120] This means a pipeline may file data consistent with its Form No. 2 or 2-A, and if the Commission wishes to force the pipeline to file alternative data, the Commission must first show that the pipeline's submitted data is not just and reasonable, and then demonstrate that, as applied to the specific pipeline, the Commission's alternative requirement is just and reasonable.[121]

The Commission has made no such showing with respect to pipelines' capital structures. The NOPR provides no reason, aside from its reference to a portion of Opinion No. 414-A, why the Commission would not permit pipelines to simply report data used in their Form No. 2 filings "without modification," as it does for most other data to be included in Form No. 501-G.[122] The Commission provides no justification for its decision to arbitrarily single out the pipeline's capital structure from other data points to be reported in Form No. 501-G. The Commission has failed to meet the burden of proof required under NGA section 5 to require a pipeline to submit an alternative capital structure. To the extent the Commission considers Opinion No. 414-A with respect to Form No. 501-G at all, it should do so in its entirety by recognizing that a pipeline's capital structure is case-specific and permit pipelines to utilize the capital structure included in Form No. 2 or 2-A when submitting Form No. 501-G, without requiring the submission of alternative data.

[120] *"Complex" Consol. Edison Co. of N.Y.*, 165 F.3d at 1001.
[121] *See, e.g.*, *Consumers Energy Co.*, 226 F.3d at 781; *Pub. Serv. Comm'n of N.Y.*, 866 F.2d at 490 (rejecting Commission orders that improperly placed the NGA section 5 burden of proof upon pipelines).
[122] NOPR at P 33.

VI. Additional Clarifications

A. The Commission Should Replace the Phrase "Indicated Rate Reduction" in Form No. 501-G with the Phrase "Indicated Cost of Service Reduction."

Line 33 of Page 1 of the proposed Form No. 501-G computes the "Indicated Rate Reduction" that results from the pipeline's completion of the Form. This is misleading and if not modified, would create adverse consequences for pipelines. The first page of the Form simply shows the estimated reduction in the pipeline's cost of service based upon certain prescribed cost factors and, where an income tax allowance is permitted, the lower corporate income tax rate under the TCJA. A pipeline filing a limited rate reduction under option 1 may use the derived cost of service reduction shown on Page 1 as a basis for a reduction in its rates.

The Form does not show what a pipeline's rate reduction would be if the pipeline were to modify its rates in response to the new policies on income tax and other factors that would be considered in a full review of its costs and revenues in a section 4 or 5 rate proceeding. The Form does not consider the multitude of changes that may have occurred to a pipeline's cost of service, revenues, billing determinants, discount adjustments, and other issues since the pipeline's last rate proceeding. These issues could result in smaller rate reductions than would occur if only the pipeline's cost of service were to be considered. In addition, rate increases may also be possible for some pipelines, contrary to what is reported on the Form No. 501-G. Incorrectly labeling Line 33 as the "Indicated Rate Reduction" would encourage analysts, investors, and shippers to overestimate a pipeline's rate reduction, encourage unnecessary litigation, hinder settlements, and create general uncertainty as to the impact of the changed tax policies on pipelines' rates. To prevent

Line 33 from continuing to be misleading, the Commission should label it "Indicated Cost of Service Reduction."

B. On Page 3, Line 4, Column B of Form No. 501-G, the Commission Should Replace the Reference to "P. 308; L. 10, C. (b)" with "per Pipeline."

The description in Column B for Line 4 of Page 3 of the proposed Form No. 501-G of "P. 308; L. 10, C. (b)" should be replaced with "per Pipeline". This correction will allow for certain one-time or other excluded items to be adjusted out of Account 495 and is consistent with adjustments that are made to a Cost and Revenue study.

C. The Commission Should Modify Page 4, Lines 24-29 of Form No. 501-G to Reflect that Pipelines May Have Multiple Parent Companies.

Page 4, Lines 24-29 of Form No. 501-G only provides for the filing of capital structure information based on a single parent company. This fails to consider that several pipelines have multiple corporate parents. The Form and its instructions should be modified to allow pipelines to enter capital structure data based on multiple parent companies, including weighted capital structures where applicable. Page 4, Lines 24-29 should also be modified to reflect that pipelines, or their parent companies, do not always file SEC Form 10-K.

VII. Proposed Regulatory Text

INGAA offers the following changes to the proposed regulatory text to incorporate its clarifications and requested revisions to the proposed rule:

§ <u>154.404 Tax Cuts and Jobs Act Rate Reduction.</u>

(a) *Purpose*. The limited rate filing permitted by this section is intended to permit~~:~~
~~(1)~~ a natural gas company subject to the federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017~~, (2) a natural~~

~~gas company organized as a master limited partnership to reduce its maximum rates to reflect the elimination of any tax allowance included in its current rates, and (3) a natural gas company organized as a partnership (but not a master limited partnership) either (i) to eliminate any income tax allowance included in its current rates or (ii) to justify why it should continue to receive an income tax allowance and to reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017~~.

***

§ 260.402 FERC Form No. 501-G. One-time Report on Rate Effects of the Tax Cuts and Job Act

***

(b)(1) ***

(ii): A natural gas company need not file FERC Form No. 501-G if: (A) its ~~whose~~ rates are being examined in a general rate case under section 4 of the Natural Gas Act or in an investigation under section 5 of the Natural Gas Act; ~~need not file FERC Form No. 501-G.~~

(B) it commits to file a general rate case under section 4 of the Natural Gas Act within 180 days after the deadline for making its Form No. 501-G filing or is required, pursuant to the terms of a Commission-approved settlement agreement, to file a general rate case under section 4 of the Natural Gas Act;

(C) ~~In addition, a natural gas company that~~ it files an uncontested settlement of its rates pursuant to § 385.207(a)(5) of this chapter after ~~March 26, 2018~~ January 1, 2018; or

(D) its currently effective rate case settlement has a rate moratorium in effect at the time that the natural gas company is required to file the Form No. 501-G. ~~need not file FERC Form No. 501-G~~.

CONCLUSION

WHEREFORE, INGAA respectfully submits these comments and for the foregoing reasons, requests that the Commission modify and clarify the proposed rule and Form No. 501-G, as discussed herein.

Respectfully Submitted,

Joan Dreskin
Vice President and General Counsel

Ammaar Joya
Regulatory Attorney

Interstate Natural Gas Association of America
20 F Street, N.W., Suite 450
Washington, DC 20001
jdreskin@ingaa.org
ajoya@ingaa.org
(202) 216-5928

DATE: April 25, 2018