Federal Energy Regulatory Commission
March 15, 2018
Open Commission Meeting
Staff Presentation
Items: G-2 & G-3

"Good morning Mr. Chairman and Commissioners,

"Items G-2 and G-3 respond to the July 1, 2016 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *United Airlines v. FERC*. The D.C. Circuit's decision reviewed a Commission order permitting SFPP, a master limited partnership pipeline, to receive an income tax allowance for investor taxes. Under the Commission's 2005 Policy Statement, master limited partnerships, which are pass through entities and pay no taxes themselves, were able to receive an income tax allowance to compensate for investors' taxes on the partnership's income. In *United Airlines*, the D.C. Circuit held that the Commission failed to demonstrate that there was no double recovery of income tax costs when permitting SFPP to recover both an income tax allowance and a return on equity determined pursuant to the discounted cash flow methodology. On December 15, 2016, the Commission issued a Notice of Inquiry and received comments regarding the double-recovery issue in Docket No. PL17-1-000.

"Among other findings, the draft order presented as Item G-3 implements *United Airlines* by denying SFPP an income tax allowance in its cost of service. The draft Revised Policy Statement presented as Item G-2 revises the Commission's 2005 income tax policy to indicate that master limited partnerships no longer may recover an income tax allowance in their cost of service. As the *United Airlines* decision stated, the discounted cash flow methodology "determines the *pre-tax* investor return required to attract investment." Given that the return is a pre-tax investor return, permitting a master limited partnership such as SFPP to recover both an income tax allowance for the partners' tax costs and a discounted cash flow return on equity leads to a double recovery of income tax costs.

"In addition, the draft Revised Policy Statement instructs oil pipelines organized as master limited partnerships to reflect the Commission's elimination of the income tax allowance in their Form No. 6, page 700 reporting. Based upon this page 700 data, the Commission will incorporate the effects of the revised policy on industry-wide oil pipeline costs in the 2020 five-year review of the oil pipeline index level. As discussed in the prior presentation, in Item G-1, the Commission is issuing a Notice of Proposed Rulemaking that addresses the effects of this revised income tax policy on the rates of interstate natural gas pipelines organized as master limited partnerships.

"Thank you. This concludes our presentation."