ORAL ARGUMENT IS NOT YET SCHEDULED

Nos. 18-1252 & 18-1254 (consolidated)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Enable Mississippi River Transmission, LLC and Enable Gas Transmission LLC, *et al.*,
Petitioners,

v.

Federal Energy Regulatory Commission and the United States of America,
Respondents.

On Petition for Review of Orders of the Federal Energy Regulatory Commission

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REPLY BRIEF OF THE ASSOCIATION OF OIL PIPE LINES AS INTERVENOR IN SUPPORT OF PETITIONERS

Steven M. Kramer
Senior Vice President, General Counsel and Corporate Secretary
Association of Oil Pipe Lines
900 17th Street, NW, Suite 600
Washington, DC 20006
(202) 292-4502

Daniel J. Poynor
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-6233

Counsel for Association of Oil Pipe Lines

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GLOSSARY

SHORT FORM	DEFINITION
AOPL	Association of Oil Pipe Lines
FERC	Federal Energy Regulatory Commission
MLP	Master Limited Partnership

SUMMARY OF ARGUMENT

In the challenged orders, the Federal Energy Regulatory Commission ("FERC") established a new binding rule that it "will no longer permit [master limited partnership ("MLP") pipelines] to recover an income tax allowance in their cost of service." *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 ("Revised Statement"), *reh'g denied*, 164 FERC ¶ 61,030 (2018) ("Rehearing Order"). Contrary to FERC's claim (Br. at 20-21) that the Revised Statement was simply a "general statement of policy" that did not "directly affect regulated entities," the Revised Statement had an immediate, negative effect on MLP oil pipelines, including members of the Association of Oil Pipe Lines ("AOPL"). FERC's orders are therefore justiciable and AOPL has standing to challenge them.

FERC's fundamental error was to assume the answer to the question it was charged with investigating. This court held that FERC had not "provided sufficient justification" for permitting MLP pipelines to include an income tax allowance in their cost of service and remanded to FERC for further explanation. *United Airlines v. FERC,* 827 F.3d 122, 136-37 (D.C. Cir. 2016). Instead of taking a fresh look at the issue and performing an independent review, FERC treated *United Airlines* as if it compelled the conclusion. FERC's brief fails to respond adequately to this issue, giving it only passing reference. FERC Br. at 51-52.

In fact, FERC's brief continues to make the same improper assumption that *United Airlines* dictated the result. *Id.* at 31, 34. FERC's decision should be remanded on this ground alone.

FERC also failed to explain adequately its abandonment of the policy goals underlying its prior approach of permitting an income tax allowance for all regulated oil pipelines regardless of ownership structure. Those policy goals included (1) ensuring comparability in rates between MLP pipelines and corporate pipelines, and (2) encouraging investment in pipeline infrastructure through the use of the MLP organizational form. Because FERC assumed *United Airlines* dictated the result, it glossed over those prior policies and failed to justify its abandonment of them. FERC does not respond to this issue in its brief. Shippers' brief is also unavailing as it too relies on the mistaken assumption that *United Airlines* dictated the result.

FERC further failed to respond meaningfully to key evidence that undercuts its "double recovery" theory. The record showed that MLP pipeline returns are not systematically higher than corporate pipeline returns. FERC's assumption that MLP pipelines do not need an income tax allowance because they already recover their income taxes through a (presumably higher) return on equity therefore does not square with market reality. The FERC and Shipper briefs repeat the Revised Statement's various criticisms of this evidence, but they fail to grapple with the fundamental issue that FERC's double-recovery theory and decision to deny MLP pipelines an income tax allowance is unsupported by any empirical data and runs counter to the record evidence.

Additionally, FERC erred by disregarding evidence concerning the likely – and then actual – adverse effect of its decision on MLP pipeline finances and their ability to attract capital. Instead, FERC simply stated it was "not the case" that MLP pipelines would be harmed by FERC's decision. Revised Statement at P 44, R.70 (JA ___). The FERC and Shipper briefs fail to respond adequately on this issue but simply repeat the Revised Statement's conclusion that MLP pipelines are not entitled to a "double recovery."

In sum, FERC's investigation was fundamentally flawed. This court should require FERC to revisit the issue unshackled from its mistaken assumption that *United Airlines* dictated the result, to conduct a proper investigation of the evidence, and to provide an adequate explanation for the ultimate decision made.

ARGUMENT

I. The Challenges to the Revised Statement Are Justiciable.

A. The Revised Statement established a binding rule that is judicially reviewable.

FERC contends the Revised Statement is simply a "general statement of policy" that did not "change rates or otherwise directly affect regulated entities." FERC Br. at 20-21. Shippers similarly argue that oil pipeline "rates are entirely unaffected by the [Revised Statement] and no legal consequences flow from it." Shipper Br. at 8. On the contrary, the Revised Statement established a binding rule that FERC "will no longer permit MLPs to recover an income tax allowance in their cost of service." Revised Statement at P 2, R.70 (JA ___). That rule had an immediate, negative effect on FERC-regulated oil pipelines.

For example, Enbridge Energy, Limited Partnership ("Enbridge") is obligated by a FERC-approved settlement to file annual cost-of-service rates and was required to reduce its rates as a result of the Revised Statement. AOPL Br. at 9 (citing *Enbridge Energy, Limited Partnership*, 166 FERC ¶ 61,237, at PP 2-6 (2019)). FERC states that its review of Enbridge's rates is not final because it "required further information [to] make an informed determination." FERC Br. at 27-28. But in *Enbridge*, FERC sought additional information regarding the specific date that the pipeline proposed to eliminate the income tax allowance and its accumulated deferred income tax balance. 166 FERC ¶ 61,237, at P 10. The requirement that MLP pipelines eliminate their income tax allowance was not challenged given FERC's determination in the Revised Statement. *Id.* at PP 7, 10.

Additionally, as AOPL explained (Br. at 10-11), a reduction in the allowed cost of service for MLP pipelines has an immediate injurious effect by restricting their ability to increase existing rates using a cost-of-service justification, 18 C.F.R. § 342.4(a) (2019), or to establish initial rates for new services.

18 C.F.R. § 342.2 (2019). It also makes existing MLP pipeline rates more vulnerable to challenge by complaint, 18 C.F.R. §§ 343.1(a) & 343.2 (2019), and thus gives shippers increased negotiating power even if no complaint is filed. FERC fails to respond to these points in its brief.

Moreover, the Revised Statement specifically directed MLP oil pipelines to remove the income tax allowance from the cost of service that oil pipelines are required to report on page 700 of their annual FERC Form No. 6 filing. *See* Revised Statement at P 46 n.83, R.70 (JA ___). As AOPL previously explained (Br. at 11-12), that requirement has a direct effect on oil pipeline rates, because FERC uses the page 700 information to evaluate challenges to rates established under FERC's oil pipeline indexing methodology. FERC did not respond to that argument in its brief. Shippers argue page 700 "filings do not serve to change rates," Shipper Br. at 12 & n.39, but do not deny that FERC evaluates indexed rates using page 700 and that a reduction in page 700 costs could limit or foreclose a pipeline's ability to adjust its rates pursuant to indexing.

FERC claims (Br. at 25) AOPL incorrectly cited *Interstate and Intrastate Natural Gas Pipelines*, 164 FERC ¶ 61,031 (2018) ("Order 849") for the proposition that FERC treats the Revised Statement as "binding precedent." FERC contends Order 849 considered only *United Airlines* and Opinion No. 511-C, *SFPP, L.P.*, 162 FERC ¶ 61,228 (2018) ("Opinion No. 511-C"), *order on reh'g*, 166 FERC ¶ 61,142 (2019), as binding precedent. FERC Br. at 25 (citing Order 849 at PP 50, 54, 59). But Order 849 referred to the Revised Statement, Opinion No. 511-C and *United Airlines* collectively as the "*United Airlines* Issuances," and repeatedly attributed the change in FERC's MLP income tax allowance rules to the "*United Airlines* Issuances." Order 849 at PP 2 n.4, 29, 131, 203, 212. The binding nature of the Revised Statement is also demonstrated by its rote application in the concurrently issued Opinion No. 511-C. In Opinion No. 511-C, while FERC conspicuously omitted any citation to the Revised Statement, FERC denied the pipeline an income tax allowance by repeating much of the same language from the Revised Statement verbatim, and did not allow consideration of any new record evidence in the proceeding. *See* Opinion No. 511-C at P 30.

FERC contends this court previously dismissed a facial challenge to FERC's prior income tax allowance policy "as non-justiciable." FERC Br. at 19 (citing *Canadian Ass'n of Petroleum Producers v. FERC*, 487 F.3d 973 (D.C. Cir. 2007)). But *Canadian Ass'n of Petroleum Producers* did not rule on whether the facial challenge to the prior policy was permissible; instead, it dismissed it as moot because the court resolved the merits in a related case. *See* 487 F.3d at 974.

B. AOPL has standing.

FERC claims AOPL lacks standing because, FERC contends, the Revised Statement has "no immediate impact on any regulated entity." FERC Br. at 26.

On the contrary, AOPL's standing is established by the harms to its members discussed above and in AOPL's Initial Brief. AOPL Br. at 8-12.

FERC further claims AOPL lacks standing, because "it is unclear how a favorable ruling" would redress the harms to AOPL's members. FERC contends that, even if the court were to vacate and remand the Revised Statement, FERC "would remain obligated to ensure that jurisdictional entities do not over-recover their income taxes." FERC Br. at 28. FERC's argument simply reinforces the point that FERC erred by accepting as fact the double-recovery theory that it was charged with investigating. That error is redressable if on remand FERC looks at the problem afresh and engages in an independent review. Moreover, the results of an independent review could well reach a conclusion more favorable to AOPL's members, such as a return to FERC's prior policy of granting an income tax allowance to all oil pipelines regardless of organizational form.

II. FERC Erred by Adopting as Fact the Double-Recovery Theory that It Was Charged with Investigating Instead of Conducting an Independent Review of the Relevant Issues.

As AOPL explained (Br. at 12-13), FERC failed to conduct an independent review of the relevant issues, instead treating as settled fact the question it was directed to answer. In *United Airlines*, this court held that FERC had not "provided sufficient justification for its conclusion that there is no double recovery of taxes for partnership pipelines receiving a tax allowance in addition to the discounted cash flow return on equity," and remanded the issue to FERC for further review and explanation. 827 F.3d at 136, 137. On remand, however, FERC simply adopted as a fact "the fundamental premise of *United Airlines* that an income tax allowance for MLP pipelines leads to a double-recovery." Revised Statement at P 23, R.70 (JA ___). But that "premise" was what FERC was required to "demonstrate" and justify, *United Airlines*, 827 F.3d at 134, 136, not accept as a given.

FERC's brief fails to respond adequately to this issue, giving it only cursory treatment. FERC Br. at 51-52. In fact, FERC's brief continues to make the same error of assuming that *United Airlines* dictated the result. For example, FERC's brief states that for "pass-through entities … the *United Airlines* Court *found double recovery* when cost-of-service rates include both an income tax allowance and a discounted cash flow return on equity." FERC Br. at 31 (citing 827 F.3d at 137) (emphasis added). Similarly, FERC claims that its "task was not to disprove the Court's *finding of double recovery*." FERC Br. at 34 (emphasis added).

Shippers argue FERC did not err simply because it "reached the same conclusion as the *United Airlines* Court." Shipper Br. at 14. But *United Airlines* did not reach a conclusion; it vacated FERC's prior decision for failure to provide a proper explanation and remanded for further agency review. Where agency action is remanded for further explanation, the agency has the authority and indeed *the duty* to "deal with the problem afresh" on remand. *SEC v. Chenery Corp.*, 332 U.S. 194, 200-01 (1947) ("*Chenery II*").

Here, FERC failed to undertake the requisite searching inquiry. By simply adopting as fact the theoretical question posed by *United Airlines*, FERC failed to "appreciat[e] the complexities of the problem," respect the "statutory policies" at issue, or engage in responsible consideration of the facts, as it was required to do. *Chenery II*, 332 U.S. at 209. FERC's new income tax allowance policy is therefore not the product of reasoned decisionmaking and must be vacated and remanded.

III. FERC Failed to Provide a Reasoned Explanation for Abandoning the Policies Underpinning Its Prior Income Tax Allowance Methodology.

FERC's prior policy of permitting an income tax allowance for all regulated oil pipelines, including both corporations and partnerships, was the result of careful consideration of the applicable policy issues. *See Inquiry Regarding Income Tax Allowances*, 111 FERC ¶ 61,139, at P 1 (2005) ("2005 Policy Statement"). As AOPL explained (Br. at 14-21), FERC erred by reversing course without grappling with the important goals that underlay the prior policy, including (1) ensuring comparability in rates between MLP pipelines and corporate pipelines, and (2) encouraging investment in pipeline infrastructure through use of the MLP form.

FERC does not respond to this issue in its brief, and Shippers' brief fails to salvage FERC's decision.

Shippers deny that the 2005 Policy Statement remained in place post-*United Airlines*. Shipper Br. at 31-33. But Shippers' position is based on the incorrect assumption that *United Airlines* directed a specific result instead of remanding the issue to FERC for a better explanation. This court upheld the 2005 Policy Statement in *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945 (D.C. Cir. 2007) ("*ExxonMobil*"), and *United Airlines* expressly did not overrule *ExxonMobil*. 827 F.3d at 137. FERC also explained that the Revised Statement superseded the 2005 Policy Statement, Rehearing Order at P 3, R.91 (JA ___), not that the 2005 Policy Statement had been rendered ineffective by *United Airlines*.

Shippers also fail to address adequately AOPL's argument that FERC departed without a reasoned basis from the policies *underlying* the 2005 Policy Statement. Shippers dispute that FERC had a policy that rates should be comparable for corporate and MLP-owned pipelines. Shipper Br. at 34. But the 2005 Policy Statement cited the importance of maintaining comparable treatment of MLP pipelines and corporate pipelines with respect to ratemaking and observed the incongruity in denying an income tax allowance to a partnership pipeline when the same assets held by a corporation would be entitled to an income tax allowance. 2005 Policy Statement at PP 33-36, 38 & n.33. Moreover, this court, in upholding the 2005 Policy Statement and concluding that FERC had "weigh[ed] the relevant policy concerns," specifically noted FERC's findings that pipelines "operating as limited partnerships should receive a full income tax allowance in order to maintain parity with pipelines that operate as corporations." *ExxonMobil*, 487 F.3d at 950, 953.

With respect to FERC's policy of encouraging investment in pipeline infrastructure through use of the MLP organizational form, Shippers argue that the tax benefits conferred by Congress on MLPs do not authorize FERC to permit a "double recovery that conflicts with its statutory obligation to set just and reasonable rates." Shipper Br. at 28-30. Again, Shippers assume the answer to the question at issue. They also ignore that the specific tax benefits conferred by Congress were part of Congress's broader policy of encouraging pipeline infrastructure development through the use of the MLP form and that this policy was also *FERC's* policy. While the tax laws did not compel FERC to adopt its policy, that alone is not sufficient justification for abandoning it. "[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious." *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995).

IV. FERC Erred by Failing to Grapple with Crucial Empirical Evidence that Undermined Its "Double Recovery" Theory.

FERC erred by failing to respond meaningfully to the record evidence that MLP pipelines do not have higher returns than corporate pipelines, even though FERC acknowledged that such a differential would be expected under its "double recovery" theory. Revised Statement at P 33, R.70 (JA ___). Instead, FERC dismissed the issue as "irrelevant," stating that the "holding in *United Airlines* would not change [even] if the pipeline commenters were to conclusively establish that … corporate pipeline … returns exceeded MLP pipeline … returns." Revised Statement at P 30, R.70 (JA ___). By glossing over facts that did not fit with its preordained conclusion, FERC's decision "runs counter to the evidence" and lacks a reasoned basis. *Motor Vehicle Mfrs. Ass'n of US, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

As AOPL explained (Br. at 22), the record includes a study conducted on behalf of the Interstate Natural Gas Association of America ("Natural Gas Association") that undercuts FERC's assumption (which it improperly adopted as fact instead of investigating) that MLP pipelines do not need an income tax allowance because they already recover their income taxes through the rate of return on equity. Natural Gas Association Comments at 31-35, R.24 (JA ___). Since the study shows the hypothesized "double recovery" is not reflected in the actual market-based returns of corporate and MLP pipelines, FERC's theory fails to justify the radical change that it adopted, *i.e.*, the complete elimination of the income tax allowance for MLP pipelines.

The Revised Statement took issue with the Natural Gas Association study on various grounds, Revised Statement at P 33, R.70 (JA ___), and the FERC and Shipper briefs repeat those criticisms. FERC Br. at 47-48; Shipper Br. at 24-27. But the fact that FERC began its review of the Natural Gas Association study by concluding that its findings were "irrelevant" highlights the perfunctory nature of FERC's inquiry and demonstrates that FERC's criticisms were simply pretexts for dismissing facts that did not fit FERC's theory. FERC did not point to any computational errors in the Natural Gas Association study or claim that the returns reported for any entity in the study were inaccurate. Instead, FERC sought to dismiss the significance of the study with criticisms that side-stepped the fundamental issue.

The Natural Gas Association study consisted of three separate analyses. The first analysis revised a study originally presented by shippers in the underlying case on appeal in *United Airlines*. The revised analysis showed that when the shippers' 2008 study was updated for current data, the discounted cash flow returns for the corporate pipelines *exceeded* the returns of certain of the MLP pipelines – the opposite of the shippers' result. Natural Gas Association Comments at 5, 31-33, R.24 (JA ___); Revised Statement at P 28, R.70 (JA ___). FERC rejected that analysis as "irrelevant" and "dubious" because of its "small sample size." Revised Statement at P 29-30 & n.53, R.70 (JA ___).

The second analysis compared the discounted cash flow results for 23 pipelines between August 2007 and January 2017, and showed that MLP pipeline returns are not systematically higher than those of corporate pipelines. Natural Gas Association Comments at 6, 36, R.24 (JA ___); Revised Statement at P 32, R.70 (JA ___). Here, FERC did not take issue with the sample size, but rejected the analysis for not assessing the differences in risk between corporate and MLP pipelines, noting that "differences in risk and other factors can subsume any effects of taxation." Revised Statement at P 33, R.70 (JA ___). But that is precisely the point. FERC has historically used the same proxy group to derive the return on equity for all oil pipelines based on FERC's longstanding presumption that all oil pipelines "fall within a broad range of average risk." *See Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048, at PP 2, 7, 57-66 (2008). Given that the proxy group return on equity is valid for all oil pipelines regardless of "differences in risk and other factors," and those differences "subsume any effects of taxation," FERC fails to justify its finding that the proxy group return when applied to MLP pipelines causes a "double" recovery of the income tax allowance. Said another way, since the allowed (proxy group) return for an MLP pipeline is no higher than the allowed return for a corporate pipeline and the latter by definition does not include any recovery of MLP unitholders' taxes, FERC fails to justify a finding of "double recovery" when an MLP pipeline's cost of service includes the income tax costs properly attributable to it (*ExxonMobil*, 487 F.3d at 953) and the proxy group rate of return on equity that FERC has traditionally awarded to all oil pipelines regardless of organizational form.

The third analysis compared the returns of certain MLP pipelines with those of their corporate affiliates that own a significant percentage of the MLP units, and again showed that MLP pipeline returns were not systematically higher than corporate pipeline returns over an approximately ten-year period. Natural Gas Association Comments at 5, 33-35, R.24 (JA ___). Although that analysis addressed the issue of comparable risk, FERC rejected it on the ground that "the affiliated MLPs were only a fraction of the affiliated corporation's larger business interests." Revised Statement at P 33, R.70 (JA ___). FERC also criticized the small sample size. *Id.* Here again, FERC focused on technical criticisms while avoiding the larger issue. Moreover, by focusing on specific perceived flaws in each individual analysis, FERC failed to consider the validity of the Natural Gas Association study as a whole, given that each of the three analyses took a different perspective and assessed different groups of companies but reached the same conclusion.

Moreover, while FERC took issue with the Natural Gas Association study, it cited no evidence that the discounted cash flow returns of MLP pipelines were higher than corporate pipelines. FERC fails to explain adequately how a finding of over-recovery of income tax costs, let alone *double* recovery, can be sustained without any evidence in the record that FERC's theoretical observations regarding the pre-tax nature of MLP returns make a difference to actual MLP returns. Nor does FERC explain why the remedy it chose – complete elimination of the income tax allowance for MLP pipelines – was justified in the absence of any real-world evidence of a problem.

FERC claims the "issue in this case is not whether a pass-through entity is entitled to recovery of income tax expenses related to regulated assets (*ExxonMobil* says it is, 487 F.3d at 953); but whether that entity can recover those income tax expenses twice." FERC Br. at 38. But if the problem is that an MLP pipeline may recover its income tax expense twice – once through the income tax allowance and once through the rate of return on equity – it is surely relevant and worth further inquiry when the facts indicate that MLP returns are no higher than corporate returns. In other words, to the extent there is a "double recovery" it does not result in any difference in the overall cost of service. When a theory does not fit the facts, an agency has the obligation to ask why and investigate further. Here, FERC declared the issue to be irrelevant. That is not reasoned decisionmaking.

V. FERC Erred by Ignoring Evidence that Removal of the Income Tax Allowance for MLP Pipelines Could Have Significant Adverse Effects on MLP Pipelines and Their Ability to Attract Capital.

As AOPL explained (Br. at 24-28), FERC erred by ignoring ample record evidence of the potential – and actual – adverse effect on MLP pipeline finances of FERC's decision to eliminate the income tax allowance. Instead, the Revised Statement held it was "not the case" that the removal of the income tax allowance for MLP pipelines would deter investment in those entities, because FERC claimed it was simply following *United Airlines* by denying "MLP pipelines the double recovery of their income tax costs." Revised Statement at P 44, R.70 (JA ___). In other words, FERC denied there would be a negative effect on MLP pipelines' ability to raise capital based solely on its mistaken view that *United Airlines* compelled a particular result, without engaging in any discussion or review of the record evidence regarding the potential real-world effect of FERC's policy on MLP pipeline finances. FERC further erred by denying rehearing without comment despite the evidence that the Revised Statement had undermined market confidence in the MLP structure and made it more difficult for MLP pipelines to raise capital. *See* AOPL Br. at 27.

FERC's brief fails to respond adequately to AOPL's position, but simply repeats the Revised Statement's conclusion that "double recovery through the income tax allowance is not necessary to attract capital." FERC Br. at 50. FERC also mischaracterizes AOPL's argument as being "premised on the mistaken understanding that the discounted cash flow methodology fails to determine a pre-tax return." *Id.* Instead, AOPL's position is that FERC did not engage in reasoned decisionmaking because FERC failed to conduct even a cursory investigation of the real-world effect that its policy was predicted to have – and did have – on the finances of the industry it regulates. FERC's brief has no answer to AOPL on that issue.

Shippers claim "FERC carefully assessed whether it would undermine the ability of MLP owned pipelines to attract capital," and concluded that "eliminating [the] double recovery" allows MLP pipelines "to attract capital in parity with corporate pipelines." Shipper Br. at 35-36. But the portions of the Revised Statement that Shippers claim reflect a "careful" assessment simply restate FERC's mistaken assumption that *United Airlines* dictated the result or are otherwise irrelevant. *See* Shipper Br. at 35-36 (citing Revised Statement at PP 12-14, 18-19, 35, 43-44, R.70 (JA ___)). They are devoid of any discussion of the real-world effect of FERC's policy on MLP pipeline finances.

Shippers also seek to rebut the record evidence of the negative effect of FERC's policy by citing three news articles. Shipper Br. at 35 n.138. Those articles are not in the record and provide no basis for supporting FERC's decision because FERC did not rely on them. *SEC v. Chenery Corp.*, 318 U.S. 80, 95

(1943). Nor do the articles, dated March 15, 2018 and March 16, 2018 (when the Revised Statement was issued and the day after), reflect the consequences of FERC's policy change for MLP pipelines in the following weeks and months. *See, e.g.*, Comments of OFI Steelpath, Inc. on the Revised Policy Statement of the Treatment of Income Tax, at 6-10, R.87 (JA ___) (FERC's policy has imposed "severe" harm on the MLP pipeline industry, caused significant capital outflows, and "substantially halt[ed] the capital raising ability" of certain MLP pipelines); Request for Clarification or Rehearing and Expedited Action of Dominion Energy, Inc., at 3, 9-11, R.72 (JA ___) (the Revised Statement has "impaired the financial integrity" of MLP pipelines and may cause an "industry-wide restructuring" from the MLP to corporate form); Request for Clarification of the Master Limited Partnership Association, at 11-12, R.73 (JA ___) (describing "dramatic decline in MLP market value" and expected negative effect on "equity financing for capital expenditures and long-term development plans"). FERC ignored these real-world results. Rehearing Order at PP 7-8, R.91 (JA ___). Shippers' citation to three news articles that FERC did not consider does not cure that error.

FERC's refusal to consider market realities in departing from its prior policy is an abdication of its responsibility to protect the financial integrity of the entities it regulates and does not constitute reasoned decisionmaking. The challenged orders must therefore be remanded for further investigation.

CONCLUSION

For the foregoing reasons, FERC's decision should be vacated and remanded.

Respectfully submitted,

/s/ Daniel J. Poynor

Daniel J. Poynor
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-6233

Counsel for Association of Oil Pipe Lines

Of Counsel:

Steven M. Kramer
Senior Vice President, General Counsel and Corporate Secretary
Association of Oil Pipe Lines
900 17th Street, NW, Suite 600
Washington, DC 20006
(202) 292-4502

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,522 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman 14-point typeface.

/s/ Daniel J. Poynor
Daniel J. Poynor
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1796

Counsel for Association of Oil Pipe Lines

Dated: October 25, 2019

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d) and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have this 25th day of October, 2019, caused to be served copies of the foregoing Reply Brief of the Association of Oil Pipe Lines as Intervenor in Support of Petitioners upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system.

<u>/s/ Daniel J. Poynor</u>
Daniel J. Poynor
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1796

Counsel for Association of Oil Pipe Lines