Mountain Valley Pipeline, LLC
Southgate Project
Docket No. CP19-14-000

Responses to FERC Office of Energy Market Regulation Data Requests
Dated February 13, 2019

Request:

Question 1

Please provide the calculations for the Southgate Project pre-tax and after tax rate-of-return clearly stating the Federal Income Tax, State Income Tax, and all Return components. Provide any and all supporting schedules for these calculations.

Response:

Please refer to Attachment OEMR DR1a for the calculation of the pre-tax and after-tax rates of return, which utilizes the 25.1% combined effective tax rate.

Please refer to Attachment OEMR DR1b, which contains privileged and confidential information and is labeled CUI//PRIV – DO NOT RELEASE. This attachment states the Federal and State Income Tax components for each of Mountain Valley's members having an ownership interest in the Southgate Project at the time of the certificate application.

Respondent: Sarah A. Shaffer
Position: Rates Manager
Phone Number: 412.395.2580
Date: February 28, 2019

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Question 2

On March 15, 2018, the Commission revised the 2005 Policy Statement on Income Tax Allowances (Revised Policy Statement, 162 FERC ¶ 61,227).

a. Identify Mountain Valley's proposed income tax allowance as part of its proposed cost of service.

b. If Mountain Valley is still proposing an income tax allowance as part of its proposed cost of service:
   i. Is Mountain Valley a Master Limited Partnership as the term is used in the Revised Policy Statement?
   ii. Will Mountain Valley incur the proposed income tax allowance in its own name?
   iii. If Mountain Valley will incur an income tax liability in its own name, please identify the state and federal tax codes under which the income tax liability will be incurred and business tax forms that Mountain Valley will use to report and pay its income tax liability.
   iv. If Mountain Valley is a pass-through entity for income tax purposes, please explain why its proposal to include an income tax allowance will not result in a double recovery of income taxes.

Response:

The Commission's Revised Policy Statement did not provide guidance regarding the implications of the *United Airlines* decision for other partnership and pass-through business forms that are not Master Limited Partnerships. The Commission stated that it would address such issues in subsequent proceedings.

a. Mountain Valley's proposed income tax allowance included in its proposed cost of service is $9,639,799 (which is equal to the $54,928,427 Pretax Return as shown on Schedule 2 of Exhibit P times 50.00% Equity times 14.00% Return on Equity times 25.1% Combined Effective Tax Rate).

b. Mountain Valley proposes that an income tax allowance should be included in its proposed cost of service.
   i. Mountain Valley is not a Master Limited Partnership as defined in the Revised Policy Statement.
   ii. No, Mountain Valley is a pass through entity and will not incur the proposed income tax allowance in its own name.

iii. Mountain Valley will not incur the income tax liability in its own name. Please refer to the response to Request 2bii above.

iv. Mountain Valley's proposal to include an income tax allowance will not result in a double recovery of income taxes because the return on equity proposed in this proceeding is not determined using the DCF or similar methodologies. Mountain Valley's proposed 14% ROE is consistent with Commission policy and precedent,[1] is the same ROE the Commission authorizes for greenfield pipelines for new market entrants, and is the same ROE that the Commission approved, and a federal appellate court recently upheld, for Mountain Valley's yet-to-be-completed Mainline System.[2] Pursuant to Section 7 of the Natural Gas Act ("NGA"), the Commission sets an initial rate for a new pipeline and it does not evaluate whether this ROE accounts for investor-level taxes. As the Commission has explained, initial rates approved under NGA Section 7 "ensure that the consuming public may be protected until just and reasonable rates can be determined through the more thorough and time-consuming ratemaking sections of the NGA."[3]

Consistent with Commission precedent, if the Southgate Project is approved, Mountain Valley will file a cost and revenue study at the end of its first three years of actual operations. The cost and revenue study will provide an opportunity for the Commission and the public to review Mountain Valley's original estimates, upon which its initial rates for the Southgate System are based, and evaluate whether Mountain Valley is over-recovering its cost of service with its approved initial rates, and determine whether the Commission should exercise its authority under NGA Section 5 to establish just and reasonable rates. Mountain Valley's proposed income tax allowance will be one such element of this review.

Moreover, as the Commission recognized in *Trailblazer Pipeline Co.*

[1] *See* Southgate Application at 17-18.
[2] *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) ("MVP Certificate Order"), *order on reh'g*, 163 FERC ¶ 61,197 (2018), *aff'd*, *Appalachian Voices v. FERC,* Nos. 17-1271, *et al.*, 2019 WL 847199, at *1 (D.C. Cir. Feb. 19, 2019) ("FERC's approval of Mountain Valley's requested fourteen percent return on equity was reasonably based on the specific character of the Project and Mountain Valley's status as a new market entrant[.]").
[3] MVP Certificate Order at P 83 (internal quotations omitted); *Tenn. Gas Pipeline Co.*, 160 FERC ¶ 61,027 at P 6 n.15 (2017) ("[I]nitial project rates are . . . effective only until the natural gas pipeline's next NGA section 4 rate proceeding") (citing *Mo. Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1068 (D.C. Cir. 2003) ("initial rates 'offer a temporary mechanism to protect the public interest until the regular rate setting provisions' of § 4 of the NGA, 15 U.S.C. § 717c, come into play.") (citing *Algonquin Gas Transmission Co. v. FPC*, 534 F.2d 952, 956 (D.C. Cir. 1976)); *Atl. City Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 392 (1959) ("Section 7 procedures in such situations thus act to hold the line awaiting adjudication of a just and reasonable rate.")).

LLC,[4] determining whether an income tax allowance is permissible is a fact-intensive exercise. A certificate proceeding, especially for a new market entrant, is not the proper venue for such an exercise. Finally, Mountain Valley's ownership structure very well may not include any MLP interests (currently a majority of Mountain Valley's ownership is comprised of C-Corps owned by publicly-traded companies) by the time of its three-year cost and revenue study or first NGA Section 4 or Section 5 rate case following in-service. All of these reasons support approval of the inclusion of a proposed income tax allowance.

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[4] 166 FERC ¶ 61,141 (2019).