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Dated: December 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-30978 Filed 12-22-16; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD17-1-000]

Greybull Valley Irrigation District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 7, 2016, the Greybull Valley Irrigation District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Greybull Valley Hydroelectric Project would have an installed capacity of 4,500 kilowatts (kW) and would be located at the end of the Roach Gulch Discharge Canal. The project would be located near the Town of Meeteetse in Park County, Wyoming.

Applicant Contact: Ted Sorenson, Wyoming Water Power, LLC, 1032 Grandview Drive, Ivins, UT 84738, Phone No. (208) 589-6908.

FERC Contact: Robert Bell, Phone No. (202) 502-6062, email: robert.bell@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 200-foot long, 60-inch-diameter intake pipe connected to the existing 60-inch Roach Gulch Discharge Canal; (2) a proposed 32' wide by 35' long powerhouse containing one generating unit with an installed capacity of 4,500-kW; (3) a proposed tailrace discharging directly into the Roach Gulch Discharge Canal; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 11,221 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.¹ All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at [http://](http://www.ferc.gov/docs-filing/efiling.asp)

www.ferc.gov/docs-filing/efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such

¹ 18 CFR 385.2001-2005 (2015).

copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (e.g., CD17–1–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659.

Dated: December 15, 2016.

Kimberly Bose,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL17–1–000]

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

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: Following the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *United Airlines, Inc., et al. v. Federal Energy Regulatory Commission*, 827 F.3d 122 (D.C. Cir. 2016), the Commission seeks comment regarding how to address any double recovery resulting from the Commission’s current income tax allowance and rate of return policies.

DATES: Initial Comments are due February 6, 2017, and Reply Comments are due February 27, 2017.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

• **Instructions:** For detailed instructions on submitting comments, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Glenna Riley (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–8620, Glenna.Riley@ferc.gov.

Andrew Knudsen (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6527, Andrew.Knudsen@ferc.gov.

James Sarikas (Technical Information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6831, James.Sarikas@ferc.gov.

Scott Everngam (Technical Information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6614, Scott.Everngam@ferc.gov.

SUPPLEMENTARY INFORMATION:

1. The Commission seeks comments regarding how to address any double recovery resulting from the Commission’s current income tax allowance and rate of return policies. This Notice of Inquiry (NOI) follows the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) holding in *United Airlines, Inc., et al. v. Federal Energy Regulatory Commission* that the Commission failed to demonstrate that there is no double recovery of taxes for a partnership pipeline as a result of the income tax allowance and return on equity (ROE) determined pursuant to the discounted cash flow (DCF) methodology.¹ Accordingly, the Court remanded the decisions to the Commission to develop a mechanism “for which the Commission can demonstrate that there is no double recovery” of partnership income tax costs.²

2. The Commission recognizes the potentially significant and widespread effect of this holding upon the oil pipelines, natural gas pipelines, and electric utilities subject to the Commission’s regulation. The importance of the income tax policy for partnership entities extends well-beyond the particular interests of the parties to the *United Airlines* proceeding. The Commission also recognizes that additional industry comment may provide further insight into the relationship between a partnership’s income tax allowance and the Commission’s DCF methodology. Accordingly, this NOI seeks further information as the Commission re-

evaluates its policies following the *United Airlines* decision. Initial Comments are due February 6, 2017, and Reply Comments are due February 27, 2017.

I. Background

3. This proceeding involves the relationship between the Commission’s income tax allowance and ROE policies. Both have evolved in the past two decades to address the emergence of partnership entities in FERC-regulated industries, particularly Master Limited Partnerships (MLPs) that own oil and natural gas pipeline assets.³

A. The MLP Business Model

4. An MLP is a publicly traded partnership.⁴ In order to be treated as an MLP for Federal income tax purposes, an MLP must receive at least 90 percent of its income from certain qualifying sources, including natural gas and oil pipelines.⁵

5. MLPs consist of a general partner, that manages the partnership, and limited partners, that provide capital and receive cash distributions. MLP limited partner units are traded on public exchanges, just like corporate stock shares.⁶ Based upon the MLP’s partnership agreement, MLPs generally (a) distribute most “available cash flow” to the general and limited partners in the form of quarterly distributions, and, in a separate calculation, (b) allocate to the general and limited partners net partnership income for income tax purposes.⁷

³ See *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008) (*Proxy Group Policy Statement*); *Inquiry Regarding on Income Tax Allowances*, 111 FERC ¶ 61,139 (2005) (*Income Tax Policy Statement*).

⁴ The Internal Revenue Service defines a “publicly traded partnership” as any partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. 26 U.S.C. 7704; 26 CFR 1.7704–1.

⁵ 26 U.S.C. 7704. Qualifying sources include natural resource activities such as exploration, development, mining or production, processing, refining, transportation, storage and marketing of any mineral or natural resource, including gas and oil. *Id.*

⁶ *Proxy Group Policy Statement*, 123 FERC ¶ 61,048 at P 10.

⁷ *Id.* at P 11; Master Limited Partnership Association (MLPA), *MLP–101, Basic Tax Principles*, <https://www.mlpassociation.org/mlp-101/basic-tax-principles/> (last visited Nov. 29, 2016) (*MLPA Basic Tax Principles*). Most MLP agreements define “available cash flow” as (1) net income (gross revenues minus operating expenses) plus (2) depreciation and amortization, minus (3) capital investments the partnership must make to maintain its current asset base and cash flow stream. Depreciation and amortization may be considered a part of “available cash flow,” because depreciation is an accounting charge against current income, rather than an actual cash expense. Thus,

¹ *United Airlines Inc., et al. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (*United Airlines*).

² *Id.* at 137.