

3. Commission Determination

56. We deny both Process Gas' and Enable's rehearing requests. Commission policy supports the position adopted by Order No. 849.

57. Specifically, we reject Process Gas' argument that Order No. 849 incorrectly permitted the wholly owned subsidiary of a corporation to claim an income tax allowance on FERC Form No. 501-G.¹¹⁴ Rather, the Commission's standalone income tax policies have long permitted a wholly owned pipeline subsidiary to recover the income tax costs of its corporate parent that arise from jurisdictional service.¹¹⁵ Moreover, under the stand-alone methodology, it is not relevant that the income from the subsidiary allocated to the corporate parent may be offset by other deductions or losses of the parent or affiliates.¹¹⁶ Rather, as the D.C. Circuit has explained, under the stand-alone methodology, "pipeline ratepayers may be assessed with a tax expense when the consolidated company in fact pays no taxes."¹¹⁷

58. Enable's arguments are also unpersuasive. The Commission addressed similar arguments in its July 30, 2018 *Enable MRT* decision, which addressed Enable's own NGA section 4 rate proceeding where Enable argued that an income tax allowance should be permitted for the income tax costs of its corporate MLP unitholders.¹¹⁸ In the *Enable MRT* decision, the Commission explained that *United Airlines'* double-recovery concern precludes an income tax allowance for the income tax costs of corporate MLP unitholders as well as other MLP unitholders. The *Enable MRT* decision emphasized the distinction between (a) a pipeline organized as a pass-through entity that

is owned by an MLP that has corporate unitholders; and (b) a pipeline organized as a pass-through entity that is a wholly owned subsidiary of a corporation. The Commission explained that an MLP incurs no tax liability prior to making the distribution to its unitholders that is reflected in the DCF model's determination of the MLP's ROE.¹¹⁹ Thus, the MLP's distribution includes funds that the corporate and individual unitholders may use to pay taxes on their share of the MLP's income.¹²⁰ In contrast, a corporation that wholly owns a pass-through pipeline pays the corporate income tax prior to the investor-level dividend reflected in the DCF model's calculation of the pipeline's ROE.¹²¹ Although a double-recovery results from granting a pipeline an income tax allowance to reflect the tax liability of corporate or other MLP unitholders, no double-recovery results from granting an income tax allowance to the wholly owned subsidiary of a corporation.¹²² Consistent with this logic, Order No. 849 permitted an income tax allowance for the wholly owned subsidiary of a corporation while denying an income tax allowance for the tax costs of an MLP's corporate unitholders.

59. In any case, in regard to both Enable's and Process Gas' concerns, we reiterate that the FERC Form No. 501-G serves a limited informational purpose involving the Commission's exercise of its discretion to initiate NGA section 5 investigations of interstate natural gas pipelines' rates¹²³ and the holdings of Order No. 849 do not establish a broader rule constraining pipelines or shippers from adopting contrary positions in other proceedings.¹²⁴

III. Document Availability

60. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page www.ferc.gov and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

61. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits in the docket number field.

62. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

By the Commission. Commissioner McNamee is not participating.

Issued: April 18, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. OAG 161; AG Order No. 4443-2019]

Updating the Description of Functions for the Executive Office for United States Attorneys

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the organizational regulations of the Department of Justice to make ministerial changes to the description of the organization and functions of the Executive Office for United States Attorneys (EOUSA).

DATES: Effective April 26, 2019.

FOR FURTHER INFORMATION CONTACT: Jay Macklin, General Counsel, Executive

¹¹⁴ Order No. 849, 164 FERC ¶ 61,031 at P 57 (citing *BP West Coast Products, LLC*, 374 F.3d at 1289).

¹¹⁵ Under the stand-alone policy, a regulated entity is permitted an income tax allowance notwithstanding the fact that it is the corporate parent that pays the income tax on behalf of the regulated entity. *City of Charlottesville v. FERC*, 774 F.2d 1205, 1207-1208 (D.C. Cir. 1985). See also *BP West Coast Products, LLC*, 374 F.3d at 1289 (explaining that an income tax allowance is appropriate in the cost of service of a pass-through subsidiary of a corporation "when such a subsidiary does not itself incur a tax liability but generates one that might appear on a consolidated return of the corporate group").

¹¹⁶ *City of Charlottesville*, 774 F.2d at 1215.

¹¹⁷ *Id.* (emphasis original).

¹¹⁸ *Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075, at PP 29-40 (2018) (*Enable MRT*). *Enable MRT* was a wholly owned subsidiary of an MLP. Because 86 percent of the MLPs unitholders were corporations, *Enable MRT* claimed that it should receive an income tax allowance based upon the corporate income tax rate as applied to this 86 percent corporate ownership share.

¹¹⁹ *Id.* P 35.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ As noted elsewhere in this order, the pipeline may also use FERC Form No. 501-G and an Appendix to FERC Form No. 501-G in any discretionary limited NGA section 4 rate reduction pursuant to Order No. 849. See *supra* note 106. However, regardless of the tax treatment of wholly owned corporate subsidiaries on the FERC Form No. 501-G, the pipeline in the Appendix could claim that as a subsidiary of a corporation it incurs a corporate income tax allowance. This Appendix could then serve as the basis for any rate adjustment pursuant to the limited NGA section 4 rate filings permitted by Order No. 849.

¹²⁴ See Order No. 849, 164 FERC ¶ 61,031 at P 135. The electronic version of FERC Form No. 501-G filed by a pipeline can easily be modified by any shipper to change the taxpaying status of the regulated entity and the shipper could attempt to use this as the basis of its own NGA section 5 complaint (as opposed to relying upon the Commission's discretionary unilateral action).

Office for United States Attorneys, Department of Justice, Washington, DC 20530; (202) 252-1600.

SUPPLEMENTARY INFORMATION: 28 CFR part 0 provides for the organization of the Department of Justice. As part of that regulation, 28 CFR 0.22, subpart D-1, Executive Office for U.S. Attorneys, describes the general functions of EOUSA. The current regulation provides that EOUSA shall publish and maintain a U.S. Attorneys' Manual. Recently, however, the name of the U.S. Attorneys' Manual was changed to the Justice Manual. This final rule makes ministerial revisions to 28 CFR 0.22 to reflect that name change. It also makes minor revisions to reflect the current functions of EOUSA's Office of Legal Education. The proposed changes are ministerial in nature rather than substantive.

Regulatory Certifications

Administrative Procedure Act

This rule relates to a matter of agency management or personnel, is a rule of agency organization, procedure, or practice, and is not a substantive rule. As such, this rule is exempt from the usual requirements for prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(b) & (d).

Regulatory Flexibility Act

This rule will not have an impact on small entities because it pertains to agency personnel and administrative matters and, therefore, is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A Regulatory Flexibility Act analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. See 5 U.S.C. 603(a).

Executive Orders 12866 and 13563—Regulatory Review

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), The Principles of Regulation, and Executive Order 13563, "Improving Regulation and Regulatory Review," section 1, General Principles of Regulation.

This action is "limited to agency organization, management, or personnel matters" and thus is not a "rule" for purposes of review by the Office of Management and Budget. See Executive Order 12866, "Regulatory Planning and Review," section 3(d)(3).

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not a regulatory action under Executive Order 13771 because this rule imposes no costs and is not a significant regulatory action under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Congressional Review Act

This action is not a major rule as defined by the Congressional Review Act. See 5 U.S.C. 804. This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is defined by the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of

the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE [AMENDED]

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

■ 2. Amend § 0.22 by revising paragraphs (a)(1), (b), and (c), to read as follows:

§ 0.22 General functions.

* * * * *

(a) * * *

(1) Evaluating the performance of the offices of the U.S. Attorneys, making appropriate reports and inspections and taking corrective action where indicated.

* * * * *

(b) Publish and maintain the Justice Manual and other guidance for the U.S. Attorneys' offices and those other organizational units of the Department concerned with litigation.

(c) Supervise the operation of the Office of Legal Education, which shall provide training to all Department of Justice attorney and non-attorney legal personnel and publish the Department of Justice Journal of Federal Law and Practice.

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Dated: April 22, 2019.

William P. Barr,
Attorney General.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0058]

RIN 1625-AA08

Special Local Regulation; Lake Pontchartrain, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain navigable waters of Lake Pontchartrain in New Orleans, LA. This action is necessary to protect persons and vessels from potential hazards created by the Kenner Super Boat Grand Prix Race. Entry of vessels