September 2016

# THE DAKOTA ACCESS PIPELINE'S MASSIVE GOVERNMENT SUBSIDIES

## Summary

**The following analysis shows that the Dakota Access Pipeline's two largest owners – Enbridge Energy Partners (EEP) and Energy Transfer Partners (ETP) – cost taxpayers as much as $665 million in 2015, by avoiding corporate taxes. Furthermore, the Federal Energy Regulatory Commission (FERC) allows pipeline companies to charge their customers for some of those avoided taxes, meaning that EEP and ETP can pass along to customers a "cost" they never paid in the first place, in a double whammy to taxpayers and ratepayers. The companies also benefit from additional state and federal tax breaks and subsidies not estimated here.**

## Background

The proposed Dakota Access Pipeline would transport up to 570,000 barrels per day of fracked crude oil across the states of North Dakota, South Dakota, Iowa, and Illinois, with additional pipelines then carrying it south to Gulf Coast refineries in Texas and Louisiana.

For months, Native American tribes, farmers, and landowners along the route have attempted to stop construction of the pipeline. Among several major concerns are that its proposed route crosses sacred Standing Rock Sioux Tribe burial grounds, and that the route makes two crossings of the Missouri River, which is the tribe's main source of drinking water.

Like many fossil fuel infrastructure projects, the Dakota Access Pipeline benefits from exorbitant government subsidies at the expense of American taxpayers. Yet, to justify the pipeline's construction, proponents claim that it will create jobs and economic benefits, including local, state, and federal tax revenues. More importantly, they also claim that these benefits outweigh the damages caused by the construction of the pipeline, the risks of a potentially catastrophic spill, and the threat to the climate the oil transported would represent – which Oil Change International recently estimated to be equivalent to the emissions of building 29.5 coal plants, or adding 21.4 million cars to the roads.[1] But these company claims are undermined by the substantial subsidies enjoyed by the owners of Dakota Access.

## Dakota Access Pipeline Owners

The Dakota Access Pipeline project is owned by a number of different entities, many of which are legally structured as corporate entities called Master Limited Partnerships (MLPs). These MLPs avoid corporate-level federal income taxes entirely, and can also distribute cash on a tax-deferred basis, giving them special tax breaks that amount to a huge subsidy. The two largest investors in Dakota Access are Enbridge Energy Partners and Energy Transfer Partners. **ETP is a massive MLP, second-largest in the United States, with a market capitalization of over $21 billion as of September 2016. Yet this multi-billion dollar entity effectively pays zero corporate income tax.**

Tax shelters provided by MLPs are one of the single largest subsidies for fossil fuel production in the United States, reaching record levels as high as $4.4 billion annually in recent years. This is a very significant portion of the more than $20 billion in U.S. subsidies that flow to oil, gas, and coal companies each year.[2]

Just how big of a subsidy are EEP and ETP benefiting from each year due to their MLP structure? In **Table 1**, we approximate how much tax revenue has been lost to these entities, compared to a regular corporate structure taxed at statutory rates. To make this estimate, we employ

[1] Oil Change International, September, 2016. The Dakota Access Pipeline will lock in the emissions of 30 coal plants. http://priceofoil.org/2016/09/12/the-dakota-access-pipeline-will-lock-in-the-emissions-of-30-coal-plants/

[2] Overseas Development Institute and Oil Change International, November, 2015. Empty promises: Subsidies to oil, gas and coal production in the United States. https://www.odi.org/publications/10086-g20-subsidies-oil-gas-coal-production-united-states

a simplified method for assessing the tax revenues lost as a result of MLPs, building on an illustrative approach used by the National Association of Publicly Traded Partnerships (an MLP advocate), and further built upon in a 2013 report on MLPs prepared by Earth Track for Oil Change International, "Too Big to Ignore: Subsidies to Fossil Fuel Master Limited Partnerships."[3]

**We find that Enbridge Energy Partners and Energy Transfer Partners have collectively cost the United States Treasury as much as $665 million solely in 2015, as the result of this single subsidy (tax breaks to MLPs).** This subsidy is only one among many enjoyed by the Dakota Access Pipeline and its owners.

## Charging Customers to Recoup Phantom Taxes

To make matters worse, the U.S. federal regulation system for pipelines, overseen by FERC under the Interstate Commerce Act, allows pipelines owned by MLPs to charge customers rates that allow for recovery of income taxes – even though MLPs do not pay these taxes in the first place. These phantom charges make energy more expensive for consumers while giving the MLPs windfall profits. While the U.S. Court of Appeals for the District of Columbia Circuit recently ruled against this practice, sending the issue back to FERC for further consideration, it remains unclear whether, how, and when FERC will resolve this issue.[4] We don't have enough data to know how much Enbridge Energy Partners and Energy Transfer Partners are specifically benefiting from this subsidy, but tax expert David Cay Johnston estimates that the pipeline industry as a whole benefits to the tune of $3.4 billion annually, and a federal judge indicated the subsidy amount could be as high as $6.8 billion each year.[5]

## Federal Liability Limits: Another Potentially Massive Subsidy

Federal liability limits are yet another way in which taxpayers could end up subsidizing the Dakota Access Pipeline. These limits shield companies like EEP and ETP, and projects like the Dakota Access Pipeline, from potential risk. Current regulation states that if an onshore oil spill occurs, project owners must pay the first $634 million of cleanup costs – but if the cost of cleanup exceeds $634 million, the public will bear the remaining costs unless the owners are found to have been criminally negligent.[6] A spill that contaminated the Missouri River or the Ogallala Aquifer could easily outstrip that figure for cleanup alone, to say nothing of associated impacts (it is estimated that the aquifer supports more than $20 billion per year in food and fiber production).[7]

## Conclusion

In sum, we can say authoritatively that the Dakota Access Pipeline project and its owners are being heavily subsidized by U.S. taxpayers. **Enbridge Energy Partners and Energy Transfer Partners alone received as much as $665 million in tax breaks last year as the result of a single subsidy, and they benefit from many more subsidies that were not quantified in this analysis.**

As such, the total amount of subsidies they receive is almost certainly much higher than the estimate provided here. As climate impacts mount and important questions of native sovereignty, property rights, and clean water are raised by communities impacted by fossil fuel infrastructure, it is time for the United States to end subsidies to fossil fuel producers once and for all.

– – –

**Researched and written by:** Alex Doukas

[3] Earth Track, July, 2013. Too Big to Ignore: Subsidies to Fossil Fuel Master Limited Partnerships. https://earthtrack.net/documents/too-big-ignore-subsidies-fossil-fuel-master-limited-partnerships

[4] David Cay Johnston, September, 2016. The Daily Beast. How Congress Makes Regular Taxpayers Foot the Bill for Oil Pipeline Fat Cats. http://www.thedailybeast.com/articles/2016/09/01/how-congress-makes-regular-taxpayers-foot-the-bill-for-oil-pipeline-fat-cats.html

[5] David Cay Johnston, August, 2016. Investopedia. A Fake Tax That Doubles Oil Pipeline Profits. http://www.investopedia.com/news/fake-tax-doubles-oil-pipeline-profits/#ixzz4Kja7nlDY

[6] United States Coast Guard, November, 2015. 80 Federal Register 72342. Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability — Vessels, Deepwater Ports and Onshore Facilities. https://www.federalregister.gov/documents/2015/11/19/2015-29519/consumer-price-index-adjustments-of-oil-pollution-act-of-1990-limits-of-liability-vessels-deepwater

[7] Jane Braxton Little, March, 2009. Scientific American. The Ogallala Aquifer: Saving a Vital U.S. Water Source. http://www.scientificamerican.com/article/the-ogallala-aquifer/

**Table 1: Revenue loss calculation from 2015 MLPs subsidy to Enbridge Energy Partners and Energy Transfer Partners.**

| COMPANY | Enbridge Energy Partners (EEP) | Energy Transfer Partners (ETP) |
|---|---|---|
| | | |
| **2015 PRE-TAX INCOME REPORTED BY MLPs** | | |
| | $459,200,000 | $1,398,000,000 |
| | | |
| **CORPORATION – 2015 FEDERAL TAX SCENARIO** | | |
| Federal Income Taxes (35%) | $160,720,000 | $489,300,000 |
| Taxable Income Net of Corporate Taxes | $298,480,000 | $908,700,000 |
| Shareholder Federal Tax (28%) | $83,574,400 | $254,436,000 |
| Net Income to Shareholder | $214,905,600 | $654,264,000 |
| Total Federal Taxes | $244,294,400 | $743,736,000 |
| | | |
| **MLP – 2015 FEDERAL TAX SCENARIO** | | |
| Federal Income Taxes (35%) | $0 | -$274,000,000 |
| Taxable Income Net of Corporate Taxes | $459,200,000 | $1,672,000,000 |
| Shareholder Federal Tax (28%) | $128,576,000 | $468,160,000 |
| Net Income to Shareholder | $330,624,000 | $1,203,840,000 |
| Total Federal Taxes | $128,576,000 | $194,160,000 |
| | | |
| **2015 ESTIMATED REVENUE LOSS FROM MLPs** | | |
| TOTAL = $665,294,400 | EEP = $115,718,400 | ETP = $549,576,000 |

**For further details:**


Alex Doukas
Oil Change International
Alex [at] priceofoil.org

Lorne Stockman
Oil Change International
Lorne [at] priceofoil.org


OILCHANGE INTERNATIONAL