

139 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and, Cheryl A. LaFleur.

Colonial Pipeline Company

Docket No. IS12-410-000

ORDER ACCEPTING TARIFF FILING

(Issued June 28, 2012)

1. On May 31, 2012, Colonial Pipeline Company (Colonial) filed FERC Tariff Nos. 98.6.0, 99.8.0, and 100.6.0, effective July 1, 2012.¹ Colonial states the proposed tariff records comply with the requirements of the Interstate Commerce Act and FERC regulations, as described below. The filing was protested. As discussed below, the Commission accepts FERC Tariff Nos. 98.6.0, 99.8.0, and 100.6.0, effective July 1, 2012.

2. Colonial states Item 25 of its Rules and Regulation Tariff, FERC 98.6.0, reflects an update to the annual true-up of the actual volumes and capital expenditures incurred for its Ultra Low Sulfur Diesel (ULSD) Capital Recovery Surcharge which results in a decrease in the ULSD Surcharge. In its Local Rates Tariff, FERC 99.8.0, Colonial states that although no tariff rates changed as annually provided by the Commission's indexing regulations under 18 C.F.R. § 342.3 or by market-based rate authority under 18 C.F.R. § 342.4(b),² Colonial encloses a Schedule of Rates showing the unchanged rates and the

¹ Colonial Pipeline Company, FERC Oil Tariff, Product Pipeline Tariffs - [Local Rates Tariff, FERC 98.6.0, 98.6.0, Tariff, FERC 99.8.0, 99.8.0, Tariff, FERC 100.6.0, 100.6.0](#).

² Colonial states that FERC's Letter Order issued under Docket No. OR00-3-000 on June 13, 2001 granted Colonial market-based rate status in the Northeast markets of Pennsylvania, New Jersey and New York. In addition, Colonial states that FERC's Letter Order issued under Docket No. OR99-5-000 on August 1, 2000 granted Colonial market-based rate status to destinations in Gulf Coast markets, including Louisiana and Mississippi.

applicable index rate ceiling levels for movements from each origin to each destination. In addition, FERC 99.8.0 includes the following tariff changes for Colonial's airport destinations: (1) in Item 285, the Charlotte Douglas Airport Volume Incentive program, which applies to any shipper who delivers in excess of 200,000 barrels of aviation kerosene, is extended through June 30, 2013; (2) in Item 286, replacing the current volume incentive program in Atlanta, a new two-tier incentive structure for aviation kerosene which expires June 30, 2013, the Atlanta Hartsfield Airport Volume Incentive Program, provides a Tier 1 incentive rate to any shipper who delivers in excess of 200,000 barrels/year and a Tier 2 incentive rate to any shipper who delivers a minimum of 2,000,000 barrels/year; (3) in Item 291, a similar two-tier incentive structure as above is instituted for Nashville International Airport (Davidson County), Tennessee. In FERC 100.6.0, in its Joint Rates Tariff with Bengal Pipeline Company LLC, no tariff rates increase and the same volume incentive programs as in Colonial's FERC 99.8.0 above are instituted.

3. Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely filed motions to intervene and any unopposed motions to intervene out of time filed before the issuance date of this order are granted. A protest filed by R. Gordon Gooch (RGG) on behalf of himself as a citizen, states that the tariff rates, although not increased, are not just and reasonable. RGG states that two independent grounds for protest are included, and that both grounds seek the same result: a suspension of the tariff and a hearing to determine whether Colonial's tariff rates are just and reasonable and thus unlawful.

4. In Count I, RGG states the rates filed by Colonial are not just and reasonable as Colonial's Page 700 indicates revenues under Colonial's current tariff rates extract over \$250 million a year from consumers, calculated by subtracting line 9(b) "total cost of service" from line 10(b) "total interstate operating revenues." In Count II, RGG states that although no rates are increased in the instant docket, Colonial could file in the future to increase its already unlawfully high rates by the index percentage.

5. Colonial filed a response to RGG's protest. Colonial states RGG's protest challenges its tariffs on two grounds: (1) that Colonial's current filed rates are unjust and unreasonable, and (2) that the use of Colonial's index ceiling levels – which Colonial did not use to increase its rates – should be disallowed because they eventually will produce rates that are "substantially more unlawful." See Protest at 6, 9, 19-20. Colonial states neither ground is the proper subject of a protest and even assuming the contentions in the protest had any merit (which they do not), RGG has no standing to assert them. Colonial states RGG has not demonstrated a sufficient economic interest in the tariffs to establish his standing to protest the subject filing pursuant to the Interstate Commerce Act.

6. Colonial further states that Mr. Gooch's challenge to its index ceiling levels is unripe for review. See *Chevron Prods. Co. v. SFPP, L.P.*, 138 FERC ¶ 61,115, at P 19 (2007) (*Chevron*) ("A ceiling level is only an arithmetic calculation that provides a cap on the rate a pipeline may, but is not required to, seek to charge. The justness and

reasonableness of a possible, future index-based rate increase in not ripe for Commission review until SFPP actually submits a tariff filing proposing to charge such rates.”).

7. Colonial states that under the ICA and the Commission’s regulations, protests are limited to challenging “newly tariffed” rates or practices. *BP West Coast Prods. v. FERC*, 374 F.3d 1263, 1278 (D.C. Cir. 2004); *see also Enbridge Pipelines (North Dakota) LLC*, 132 FERC ¶ 61,274, at P 33 (2010); *TE Products Pipeline Company, LLC*, 130 FERC ¶ 61,257, at P 16 (2010); *Equilon Pipeline Co.*, 91 FERC ¶ 61,210, at 61,762 (2000). Colonial explains it has not made any changes to its current base tariff rates – a fact conceded in page 9 of RGG’s protest.

8. Concerning Count I of RGG’s protest, the proper method for challenging the justness and reasonableness of an existing rate is a complaint, and not a protest against an index ceiling level adjustment. Concerning Count II, the Commission addressed this issue previously where protesters urged the Commission to reject ceiling levels arguing that the ceiling levels would allow rate increases that were unjust and unreasonable. On October 20, 2011, the Commission issued an order denying the protests stating:

[S]ection 343.2(c) of the Commission’s regulations provides that a party may protest: (1) rates established under sections 342.3 or 342.4 of the Commission’s regulations, or (2) non-rate matters, which include operations or practices of the pipeline, other than rates. Shipper Protestants only challenge SFPP’s ceiling levels. Ceiling levels, which are calculated annually pursuant to the Commission’s indexing regulations, are not rates, nor are they a non-rate operation or practice. In sum, Shipper Protestants are not aggrieved by, and thus have no basis for protesting, the mere calculation of SFPP’s ceiling levels. Should SFPP at some future point file a tariff to raise rates above its June 30, 2011 rate levels, the filing may be protested at that time. For the foregoing reasons, the protests are denied.³

9. In *Chevron*, complainants challenged SFPP’s ceiling levels, alleging that the ceiling levels are unlawful because they will allow unjust and unreasonable rate increases, but did not assert that the ceiling level is a carrier operation or practice.⁴ The

³ *SFPP, L.P.*, 137 FERC ¶ 61,078 (2011) (*SFPP*) (Withdrawal Order) (internal footnotes omitted).

⁴ *Chevron Prods. Co. v. SFPP, L.P.*, 138 FERC ¶ 61,115.

Commission has previously found that a ceiling level is not a rate,⁵ and stated the complaints reflect a misunderstanding of “ceiling levels” as used in the context of oil pipeline indexing regulations (18 C.F.R. § 342.3). In Order No. 561, the Commission explained that “the index is intended to limit the amount by which a rate may be increased on an annual basis.”⁶ The Commission further clarified:

Each pipeline will establish an annual ceiling level for each of its rates. ... Of course, a company is not required to charge the ceiling rate, and if it does not, it may adjust its rates upwards to the ceiling at any time during the year upon filing of the requisite data, discussed below, and upon giving the appropriate notice. Since this is an annual *ceiling level*, it is not necessarily the rate which will actually be charged, contrary to the assertions of PEG and SIGMA on this point.⁷

Accordingly, the Commission found that ceiling levels, which carriers are required to calculate annually pursuant to the Commission’s indexing regulations,⁸ are neither rates⁹ nor a carrier operation or practice.

10. Moreover, the Commission also dismissed these complaints on the grounds that the issue, whether the rates that SFPP could seek to charge based on the 2011 ceiling levels would be just and reasonable, was premature and not ripe for review.¹⁰ The Commission stated that SFPP, by calculating the 2011 ceiling levels for each of its rates, had not changed its tariffs or any term or condition of service for the Complainant shippers. In short, establishing ceiling levels does not itself change the rates an oil

⁵ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,949 (1993) (stating “the index establishes a *ceiling* on rates – it does not establish the rate itself”) (emphasis in original).

⁶ *Id.* at 30,954. The indexing system is predicated upon cost changes in the economy as a whole, not to individual pipelines. *Id.* at 30,963.

⁷ *Id.* at 30,953.

⁸ 18 C.F.R. § 342.3(d).

⁹ Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,949.

¹⁰ *See, e.g., Louisiana Pub. Serv. Comm’n v. Entergy Corp., et al.*, 132 FERC ¶ 61,104 (2010) (dismissing complaint as premature and not ripe for Commission consideration).

pipeline charges. A ceiling level is only an arithmetic calculation that provides a cap on the rate a pipeline *may*, but is not required to, seek to charge. The justness and reasonableness of a possible, future index-based rate increase is not ripe for Commission review until the pipeline actually submits a tariff filing proposing to charge such rates.

11. Consistent with the above findings, the Commission finds that RGG is not aggrieved by, and thus has no basis for protesting, the mere calculation of Colonial's ceiling levels. Therefore, the issue of standing need not be addressed.

The Commission orders:

(A) Colonial's tariff records listed in footnote one are accepted, effective July 1, 2012.

(B) RGG's protest against Colonial's 2012 ceiling levels is dismissed for the reasons stated in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.