

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Colonial Pipeline Company

Docket No. IS06-191-000

ORDER ACCEPTING AND SUSPENDING TARIFFS AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued March 16, 2006)

1. On February 24, 2006, Colonial Pipeline Company (Colonial) filed FERC tariff supplements,¹ requesting an effective date of March 12, 2006. The tariff sheets propose changes relating to the shipment of reformulated gasoline (RFG) products containing methyl tertiary butyl ether (MTBE) on Colonial's pipeline. As discussed below, the Commission denies Colonial's request for waiver of the notice requirements of the Interstate Commerce Act (ICA) that would allow the tariff sheets to take effect on less than 30-days notice.² Additionally, the Commission will accept and suspend the filing to be effective the earlier of October 27, 2006, or a date established in a subsequent Commission order, subject to the outcome of the technical conference established in this proceeding.

Description of the Filing

2. Colonial's proposed Item 10A of Supplement No. 10 to FERC 68 and Item 20A of Supplement No. 3 to FERC 81 establish a link to the product specifications section found in Colonial's online Shipper Manual,³ and through that link propose restrictions on the shipment of products containing MTBE. Additionally, these items would require shippers to accept delivery of the associated product interface. Colonial requests waiver of the Commission's 30-day notice requirement and section 6(3) of the ICA to allow the proposed tariff supplements to become effective on March 12, 2006.

¹ Supplement No. 10 to FERC 68 (Rules and Regulations Tariff) and Supplement No. 3 to FERC 81 (Joint Rates Tariff with ConocoPhillips Pipe Line Company).

² See 18 C.F.R. § 341.14 (2005).

³ Colonial's Shipper Manual is found at http://www.colpipe.com/cs_man.asp.

Interventions and Protests

3. Lyondell-CITGO Refining, L.P. (LCR) filed a protest, asking the Commission to suspend the tariffs for seven months and to establish expedited hearing proceedings. LCR produces substantial quantities of gasoline containing MTBE, which CITGO Petroleum Corporation purchases and ships on the Colonial pipeline. LCR asks the Commission to issue a decision prior to the proposed March 12, 2006 effective date of the tariffs, contending that LCR, as well as the environment and national gasoline markets, will suffer irreparable injury if the tariffs are permitted to take effect. Additionally, LCR maintains that the tariffs place unjust and unreasonable obstacles on the shipment of gasoline containing MTBE and that Colonial's purported justification for discriminating against such shipments does not justify the violation of the ICA. Lyondell Chemical Company (Lyondell) filed a similar protest, generally adopting the LCR protest.

4. Huntsman International, LLC (Huntsman) also filed a protest asking the Commission to reject the filing or, in the alternative, to suspend it for seven months. Huntsman states that its subsidiaries produce large quantities of MTBE. Huntsman too cites the potential irreparable harm if the tariffs are permitted to take effect as requested by Colonial and contends that the tariff changes are unduly discriminatory because they would allow Colonial to exercise its discretion to deny shipment of certain petroleum products in a manner that could be arbitrary and capricious.

5. TEIR Associates filed comments seeking to provide the Commission with supplemental information relevant to its decision in this proceeding.

6. On March 7, 2006, Colonial filed a motion for extension of time to allow it two additional days to file an answer to the protests. Colonial also states that it will postpone the proposed effective date of the tariffs by three days from March 12, 2006, through March 15, 2006. Colonial represents that Lyondell and LCR have consented to this request. However, on March 8, 2006, Lyondell and LCR filed answers to the motion, emphasizing that, while they agreed to an extension of time for Colonial to file an answer, they did not consent to Colonial's request that the tariffs become effective March 12, 2006.

Discussion

7. The Commission denies Colonial's request for appropriate waivers so that the tariff supplements listed in footnote number one of this order can take effect on less than 30-days notice. On review of Colonial's filing, the protests, the motion for extension of time, and the answers, the Commission concludes that a number of issues require additional clarification and can best be addressed at a technical conference. A technical conference is an informal, off-the-record conference at which the parties and the Staff can

explore the issues raised by the filing, gain an understanding of the facts, and obtain additional information regarding the positions of the parties to facilitate a more prompt resolution of the issues raised by the filing. Following the conference, the parties will have an opportunity to file comments that will be included in the formal record of the proceeding and will form the basis for the Commission's final decision on the filing.

8. Colonial's proposed Shipper Manual, at 3-2, states that for Product Groupings A (RFG - Octane 87) and D (RFG - Octane 93), shipments "will be accepted on case-by-case basis, and delivery of this grade may be limited by facility and volume." Further, Colonial proposes to require shippers to be held responsible for disposal of all interface containing MTBE.

9. The Commission is concerned that the proposed tariff restrictions may be unjust and unreasonable and may unduly burden and discriminate against shippers of MTBE on Colonial's pipeline. Colonial, as a common carrier pipeline holding itself out to move RFG containing MTBE must do so upon reasonable request in a not unduly discriminatory manner. Because Colonial proposes to accept shipments on a case-by-case basis and limit delivery by facility and volume, its proposal may violate sections 1(4) and 1(6) of the ICA. The proposed tariff rules allowing Colonial such apparent discretion thus may not be just and reasonable. At the technical conference, Colonial must explain the intent and necessity for its proposal concerning transportation of RFG containing MTBE in light of the provisions of ICA sections 1(4) and 1(6).

10. Accordingly, the Commission will accept and suspend the tariff supplements listed in footnote number 1 of this order to be effective the earlier of October 27, 2006, or a date established in a subsequent Commission order in this proceeding, subject to the outcome of the technical conference established in this proceeding. The Commission will direct the Staff to convene a technical conference and to report the results of the technical conference to the Commission within 120 days of the date of issuance of this order. Colonial must be prepared at the technical conference to address the issues raised by the protests and the Commission and to provide full support for its position on each issue. The Commission favors resolution of contested issues through informal means to the extent possible and encourages the parties to explore these issues in advance of the technical conference to facilitate discussion at the technical conference.

The Commission orders:

(A) Colonial's Supplement No. 10 to FERC 68 and Supplement No. 3 to FERC 81 are accepted and suspended to be effective the earlier of October 27, 2006, or a date established in a subsequent Commission order, subject to the outcome of the technical conference established in this proceeding.

(B) The Commission's Staff is directed to convene a technical conference to explore the issues raised by Colonial's filing and to report to the Commission within 120 days of the date of issuance of this order.

(C) The Commission denies Colonial's request for waiver of the 30-day notice requirement and section 6(3) of the ICA to allow the proposed tariff supplements to become effective on less than 30 days notice.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.