

141 FERC ¶ 61,133  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Colonial Pipeline Company

Docket No. IS13-11-000

ORDER ACCEPTING TARIFF FILING

(Issued November 16, 2012)

1. On October 17, 2012, Colonial Pipeline Company (Colonial) filed FERC Tariff No. 98.10.0<sup>1</sup> to update its Shipper Manual product specifications located in Item 10(b) within Colonial's Rules and Regulations Tariff, effective October 29, 2012.<sup>2</sup> BP Products North America Inc. (BP) filed a motion to intervene and protest challenging the proposed tariff FERC Tariff No. 98.10.0. Colonial filed a response, arguing the protest lacks merit and should be dismissed. As discussed below, the Commission accepts FERC Tariff No. 98.10.0, effective October 29, 2012.

**Background**

2. Colonial owns and operates a common carrier refined products pipeline system which transports petroleum products (including gasoline, distillate, kerosene, and jet fuel) over an area extending from Houston, Texas to Linden, New Jersey in the New York harbor area. This system serves numerous refineries in the Gulf Coast and Mid-Atlantic regions as well as consumer markets throughout the Southeast and Mid-Atlantic states, including such major metropolitan areas as Atlanta, Washington, Baltimore, Philadelphia, and New York.

3. Since 2006, Colonial has provided interstate transportation of Ultra Low Sulfur Diesel (ULSD) pursuant to its Grade 61 product specification. Originally, the Grade 61 specification did not allow any renewable diesel content. On December 1, 2010, Colonial

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<sup>1</sup> Colonial Pipeline Company, FERC Oil Tariff, Product Pipeline Tariffs, [Rules and Regulations, FERC 98.10.0, 98.10.0](#).

<sup>2</sup> Colonial filed FERC Tariff No. 98.10.0 in lieu of FERC Tariff No. 98.9.0 which was withdrawn (Docket No. IS12-588-000). It now requests waiver of the Commission's notice requirements to effectuate this filing on the same date as the original filing.

filed FERC Tariff No. 98.1.0, which made certain changes to Colonial's Shipper Manual regarding product specifications for shipments of ULSD. In particular, in response to a shipper request to allow the shipment of diesel containing renewable diesel, FERC Tariff No. 98.1.0 added a new Grade 63 specification that allowed up to five percent renewable diesel. In that same filing, Colonial changed the Grade 61 specification to provide that it "may contain" up to five percent renewable diesel at delivery locations downstream (i.e., east to coast and then north to NY) of Meridian, Mississippi. Colonial states that provision was necessary because Grade 61 and Grade 63 would be commingled in Colonial's system downstream of Meridian. FERC Tariff No. 98.1.0 was not protested and became effective January 3, 2011, as proposed.

4. With both Grade 61 and Grade 63 thus potentially containing up to five percent renewable diesel at certain points on the system, Colonial states it was asked by various industry participants to create a new "clear" grade of ULSD that did not contain any renewable diesel. In FERC Tariff No. 98.9.0, filed September 27, 2012, Colonial proposed to accommodate that request by adding a new "clear" Grade 62. FERC Tariff No. 98.9.0 also proposed to eliminate Grade-61, although not to do so until April 1, 2013. FERC Tariff No. 98.9.0 was protested by Valero Marketing and Supply Company (Valero). Valero specifically stated that it did not oppose the addition of Grade-62; however, it challenged the elimination of Grade 61.<sup>3</sup>

5. Colonial responded on October 17, 2012 by withdrawing FERC Tariff No. 98.9.0, thereby mooting Valero's protest. Simultaneous with that withdrawal, Colonial filed FERC Tariff No. 98.10.0, which canceled FERC Tariff No. 98.8.0, and added the "clear" Grade 62<sup>4</sup> but left Grade 61 in place. Colonial filed on short notice (seeking an October 29, 2012 effective date) because shippers had been on notice of the addition of Grade 62 since the September 27, 2012 filing of FERC Tariff No. 98.9.0, and were anticipating Colonial's availability to accept it as of October 29. BP protested FERC Tariff No. 98.10.0 on November 1, 2012.

### **Comments and BP's Protest**

6. On November 1, 2012, BP filed a protest that Colonial's proposed Grade 62 will create market confusion and potential disruption, given that Colonial already transports Grades 61 and 63. BP states the addition of Grade 62 means that Colonial will have three

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<sup>3</sup> See Motion to Intervene and Protest of Valero Marketing and Supply Company, Docket No. IS12-588-000 (Oct. 12, 2012) (Valero Protest).

<sup>4</sup> In addition to implementing Grade 62 ULSD, the tariff revision adds corrosion inhibitor options to meet established shipper expectations and corrects a classification error on product Grade 72 (segregated distillate blendstocks).

grades of ULSD, two of which will have identical specifications.<sup>5</sup> BP states that if Colonial maintains clear specifications for Grade 61, then Grades 61 and 62 will be the same. Furthermore, BP claims there is potential grade identity confusion that is dependent on the location of the product as compared to Meridian, Mississippi, where Grade 61 can be identical with Grade 62 upstream of Meridian and while identical to Grade 63 downstream of Meridian. This would arise if Colonial does not grant waivers to include renewable diesel upstream of Meridian but does commingle Grades 61 and 63 downstream of Meridian. BP states this is unnecessarily confusing to the market and appears to have no benefit.

7. BP states that Grade 62 should be the clear grade and Grade 61 should be transitioned out, noting that Grade 63 may contain up to five percent renewable diesel but on the other hand, Grade 61 is specified as clear south of Meridian and may contain up to five percent renewable diesel downstream of Meridian. Further, renewable diesel can be injected into Grade 63. For this reason, Grade 61 should be a clear grade ULSD at all locations despite the "may contain" specification downstream of Meridian. BP had understood previously that Colonial's inclusion of a "may contain" specification downstream of Meridian for Grade 61 was merely intended to flag the potential that trace amounts of renewable diesel could be picked up in the clear Grade 61 stream because the pipeline also potentially transports Grade 63. Based on conversations with a Colonial representative, however, BP now understands that Colonial has never actually shipped Grade 63 from any location.

8. Moreover, based on Valero's Protest in Docket No. IS12-588-000, BP also understands that around the time that Colonial established a renewable grade in Grade 63, Colonial granted a non-public waiver to allow Valero to inject renewable diesel into the Grade 61 pipeline stream upstream of Meridian in lieu of requiring Valero to ship its product as Grade 63 in accordance with Colonial's specifications. BP does not know whether Colonial granted similar waivers to other shippers. BP states Valero's waiver is set forth in an e-mail, whose date has been redacted, included in the Valero Protest.<sup>6</sup>

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<sup>5</sup> BP states that while specifications for Grade 61 only allow renewable diesel downstream of Meridian, Colonial granted at least one shipper, Valero, a waiver to inject renewable diesel upstream of Meridian, rendering the Grade 61 specification identical to Grade 63. On the other hand, if Colonial enforced its specification for Grade 61 by not granting any waivers, Grade 61 should be clear because there are no renewable diesel production facilities downstream of Meridian, which renders the Grade 61 specification identical to the new Grade 62.

<sup>6</sup> See Exhibit B. The waiver acknowledges that the product shipped is Grade 63 rather than Grade 61, *see id.*, and is granted because Valero's customers do not want to purchase Grade 63, *see* Valero Protest at 11-12.

Given the date Colonial established Grade 63, BP avers the waiver possibly could have been in effect for nearly two years at this point. BP states the non-public nature of the waiver effectively inhibited a buyer's ability to identify the ULSD product it purchased (i.e., clear vs. containing renewable diesel), and by granting the waiver(s), Colonial effectively converted Grade 61 to Grade 63 without announcing it to the market.

9. BP states the Commission should require Colonial to immediately stop all waivers allowing renewable diesel in Grade 61 upstream of Meridian, and also eliminate Grade 61. BP states it recognizes a transition period may be needed to eliminate Grade 61, and concurs with the April 1, 2013 date Colonial originally proposed in Docket No. IS12-588-000, which is an appropriate because it is the first month of the New York Mercantile Exchange, Inc. (NYMEX) New York Harbor ULSD Heating Oil futures contract.

10. BP also asks that the Commission direct Colonial to specify Grade 63 "must contain" rather than "may contain" renewable diesel. BP contends the specification that the grade "may contain" up to five percent renewable product creates the opportunity for market gamesmanship. BP believes there is currently no economic way to test for the presence or level of renewable product in ULSD. If Grade 63 retains a "may contain" specification, BP states a shipper could inject ULSD containing 0 percent (i.e., clear grade), one percent, or up to five percent renewable diesel and the level of renewable diesel contained within the product would be unknown in the market after the product enters Colonial's pipeline, creating uncertainty in the contracting process for market participants.

11. Therefore BP suggests the Commission take two corrective steps by requiring (1) Grade 63 contain at least some renewable diesel (i.e., a clear grade with 0 percent renewable diesel could not ship as Grade 63); and (2) Grade 63 shippers to certify the percentage of renewable diesel blended or injected into each batch. BP states this would permit Colonial to calculate the level of renewable diesel in the pipeline at any given time and to provide this relevant information to ULSD marketers who are considering whether to export ULSD containing renewable diesel in order to comply with EPA regulations.

12. On November 7, 2012, NYMEX filed a motion for leave to intervene out-of-time and comments. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motions to intervene out of time filed before this order issues are granted. NYMEX believes Colonial's specifications should contain only two grades of ULSD – one clear grade (preferably Grade 61) and one with renewable content (preferably Grade 63) – and then the proposed Grade 62 would be unnecessary. NYMEX states that although Colonial's specifications note that Grade 61 may contain up to five percent renewable diesel downstream of Meridian, an unambiguous indication that the market perceives Grade 61 as clear is that Platts, the main price reporting service for ULSD in the physical market, consistently referred to Grade 61 as a clear grade in its reports. On November 8,

2012, Valero also moved to intervene out of time and responded to the positions of BP and NYMEX. Valero urges acceptance of the new clear Grade 62, and asks that BP's and NYMEX's proposals to change the pre-existing Grades 61 and 62 be rejected.

### **Colonial's Response**

13. In its response, Colonial maintains BP does not contest adding clear ULSD Grade 62, but rather contends that Colonial should eliminate one of the other two ULSD grades, either Grade 61 or Grade 63, to prevent "market confusion." Colonial states the addition of Grade 62 is the only substantive change made in FERC Tariff No. 98.10.0.<sup>7</sup> Colonial states that in protesting its earlier tariff, FERC Tariff No. 98.9.0, Valero similarly expressed its agreement with Colonial's addition of Grade 62, and specifically urged the Commission to approve that change.<sup>8</sup> Colonial submits it is important to allow the Grade 62 specification to become effective as scheduled on October 29, 2012, to permit it to offer this much-needed entirely "clear grade" specification to shippers. Colonial states no party, either in this docket or in the earlier Docket No. IS12-588-000 involving the withdrawn FERC Tariff No. 98.9.0, has taken issue with the addition of Grade 62 in any respect. Thus, Colonial states, there is no basis whatsoever to suspend FERC Tariff No. 98.10.0.<sup>9</sup>

14. Colonial states that BP's challenge to the continued availability of Grade 61 and Grade 63 is inappropriate to raise in a protest. According to Colonial, the bulk of BP's protest involves not the one change made in FERC Tariff No. 98.10.0, the unopposed addition of Grade 62, but rather BP's concern about potential market confusion and disruption if Colonial continues to offer transportation service for both Grades 61 and 63. Colonial states nothing in FERC Tariff No. 98.10.0 proposes to make any change to the specifications or terms of service for transporting either of those grades. Under the ICA and the Commission's regulations, Colonial explains that protests are limited to challenging "newly tariffed" rates or practices.<sup>10</sup> BP's proposal to require Colonial to

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<sup>7</sup> BP Protest at 7 ("Colonial's latest tariff correctly introduces a new Grade 62 in order to establish a truly clear ULSD grade.").

<sup>8</sup> Valero Protest at 3, 23.

<sup>9</sup> 18 C.F.R. § 343.3(c) ("Commission action ... on a protest will be limited to the issues raised in such protest").

<sup>10</sup> *BP West Coast Prods. v. FERC*, 374 F.3d 1263, 1278 (D.C. Cir. 2004); *see also CCPS Transportation, LLC*, 139 FERC ¶ 61,125, P 12 n.5 (2012); *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).

eliminate either the existing Grade 61 or Grade 63 specifications is thus not properly raised in a protest.

15. Further, Colonial argues that even if the Commission were to consider BP's protest, there is no basis to require Colonial to eliminate either of its Grade 61 or Grade 63 product specifications. Colonial states that while Grade 61 and Grade 63 are similar, they are not, as BP claims, identical. Grade 63 allows ULSD to contain up to five percent renewable diesel at all origins and destinations. The specifications for Grade 61, in contrast, require ULSD to be "clear" at the origin point, although the product "may contain" up to five percent renewable diesel at destinations downstream of Meridian, Mississippi.<sup>11</sup> A perceived gap in Colonial's slate of ULSD transportation services is filled by the addition of a pure "clear" Grade 62. Colonial states the protests from both BP and Valero recognize this gap and affirm the creation of a "clear" Grade 62 is necessary and appropriate. As Valero's protest of FERC Tariff No. 98.9.0 demonstrated, different shippers value the various specification grades differently. Colonial understands the market may not perceive a long-term need for both Grade 61 and Grade 63, and states that was the implicit premise of FERC Tariff No. 98.9.0. Colonial states it is not its role, however, to dictate which grade of ULSD (whether "clear" or a fuel with a renewable component) ultimately will "serve as the specification for futures contracts and market quotes" and become the industry standard in the liquid market or for NYMEX New York Harbor ULSD Heating Oil futures.<sup>12</sup>

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<sup>11</sup> BP expresses concern that on occasion Colonial permitted variations from the specifications for Grade 61, the result of which, BP asserts, is potential market confusion. Colonial explains such waivers occurred when Colonial accommodated shipper requests for short-term dispensation from the strict terms of the Shipper Manual. None was granted without the consent of the shipper and tankage party involved in a batch, and all batches for those shippers that consented to the waivers involved deliveries to points downstream of Meridian, Mississippi, consistent with specifications for Grade 61 and Grade 63. Colonial did not grant any waivers that changed the applicable delivery specifications.

<sup>12</sup> Colonial also notes there is sound reason for it not to publish a "must contain" (as opposed to a "may contain" specification) for renewable ULSD: Shippers who do not currently have or desire the ability to blend renewable fuels at the origin point may be negatively impacted by a "must contain" provision, since it cannot operationally deliver Grade 62 (clear ULSD) to markets upstream of Greensboro, N.C. due to tankage constraints. Colonial operates a fungible bulk products pipeline system in which commingling of like products must occur. It is operationally not feasible for Colonial to determine the amount of renewable diesel contained in the fuel injected into the pipeline's fungible system for shipment to various destinations. Moreover, the

(continued...)

16. Colonial states its highest value to its shippers and the consuming public market is to provide those services it reasonably can, consistent with maintaining a safe and reliable system. For the time being, Colonial believes the greatest interest to the greatest number of parties lie in allowing it to offer all three grades, with the market determining which ones are truly desired. For the reasons set forth above, Colonial states that BP's arguments are without merit and provide no valid ground for the Commission not to accept the tariff as filed.

### **Commission Analysis**

17. In its response,<sup>13</sup> Colonial states the commingling of like products occurs during transportation service operations as it is a fungible bulk products pipeline, and the complexity of tracking concentrations of mixtures of fuel that may or may not contain renewable diesel and then attempting to label them is not practical on its system. BP agrees there is currently no economic way to test for the presence or level of renewable product in ULSD.<sup>14</sup> Colonial also states its specifications require Grade 61 to be "clear" at the origin point, although the product "may contain" up to five percent renewable diesel downstream of Meridian. Further, Colonial states it cannot operationally deliver its proposed clear Grade 62 to markets upstream of Greensboro, NC, due to tankage constraints. Therefore, the Commission finds there is a need for the proposed clear Grade 62 on Colonial's system, which has not been opposed.

18. Colonial differentiates that Grade 61 is clear only to Meridian, proposed Grade 62 will always be clear, and Grade 63 may contain up to five percent renewable diesel at all origins and destinations. In its response, Colonial also clarified that all waivers granting allowing renewable diesel in Grade 61 occurred downstream of Meridian consistent with the specifications for that grade. Shippers requested different grades of ULSD at different destinations on Colonial's system. Therefore, the Commission is not persuaded by BP's arguments that there should only be two grades of ULSD or that one of the grades should be eliminated.

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complexity of tracking concentrations of mixtures of fuel that may or may not contain renewable diesel and then attempting to label them based on those levels is simply not practical on this system. *See* BP Protest at 13 acknowledging that "[T]here is currently no economic way to test for the presence or level of renewable product in ULSD." Colonial therefore needs to retain the "may contain" grade to continue to allow for customer deliveries of ULSD at locations where it can only support a single, commingled ULSD product.

<sup>13</sup> *Id.*

<sup>14</sup> BP Protest at 13.

19. Finally, BP does not protest the addition of Grade 62 in the instant docket. Protests to Grades 61 and 63 are not properly raised here. We find the clear Grade 62 ULSD distinct from Grades 61 and 63 as specified in Colonial's Shipper Manual, and changes to already established tariff specifications may be pursued in a complaint proceeding, but not typically as a protest, where the actual change proposed is not objected to by any protestor. Consistent with the above findings, the Commission finds that BP is has no basis for protesting the mere addition of Colonial's clear Grade 62 ULSD specification.

20. NYMEX states it believes there should only be one clear grade and one renewable grade and is concerned that if Colonial eliminates Grade 61, an orderly transition period is needed because market participants have made physical and financial commitments linked to Colonial's Grade 61 ULSD specifications pursuant to NYMEX's futures contract. As Colonial explained, there will be only one clear grade (Grade 62) as Grades 61 and 63 "may contain" renewable diesel due to operational constraints. Colonial's specifications are clear as to which grades are clear and between which points on Colonial's system. Shippers now have more choices to obtain their desired grade of ULSD. Although there may be transitional adjustments needed with respect to other grades than the Grade 62 specifications proposed here, these contracting and labeling adjustments should be resolved by the marketplace. The Commission finds no basis here to reject the proposed new clear Grade 62 specification, which is unopposed on the record.

The Commission orders:

(A) Waiver of the Commission's notice and tariff requirements under 18 C.F.R. § 341.14 and section 6(3) is granted to allow the implementation of Grade 62 for transportation on October 29, 2012.

(B) Colonial's FERC Tariff No. 98.10.0 is accepted, effective October 29, 2012.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.