

153 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Colonial Pipeline Company

Docket No. IS16-57-000

ORDER ACCEPTING TARIFF

(Issued December 2, 2015)

1. On November 2, 2015, Colonial Pipeline Company (Colonial) filed FERC Tariff No. 98.21.0 to be effective December 3, 2015. As discussed below, Colonial's tariff is accepted, effective December 3, 2015.

Background

2. Colonial explains that it filed FERC Tariff No. 98.21.0, Rules and Regulation Tariff to make clarifications to its existing practices. The tariff makes proposed changes to Items 10(b),¹ 20,² 25(b) and (e),³ 31(b),⁴

¹ Item 10(b) removes an outdated color specification exception, which permits shipment of dyed gasoline on Colonial's system. Colonial proposes to remove the provision as it maintains that dye is no longer used on gasoline shipments on its system.

² Item 20 corrects a formatting error, re-numerating Item 20(b)(1)(e) to 20(b)(2). Item 20(c)(2) also adds three existing points for clarification: (1) Bull Run, Virginia; (2) Charlotte, North Carolina; and (3) Baton Rouge, Louisiana as separate, fungible, or joint batch termination locations.

³ Item 25(e) adds a requirement that a shipper wishing to use an agent to communicate with Colonial regarding nominations, deliveries, or other business matters must do so in writing and consent to the disclosure of its business information to the agenda.

⁴ Item 31(b) amends the definition for "Available Capacity," to read "[t]he total available capacity of a Segment *for a particular Cycle*, as determined by carrier." Item 31(b) also amends the definition for "New Shipper" and "Regular Shipper" such that all inactive shippers, New or Regular, must re-apply for shipper status to ensure they continue to meet Colonial's creditworthiness standards.

35(c),⁵ 40(b) and (c),⁶ 60,⁷ and 71.⁸

3. The proposed revision to Item 25(b) states the following.

Carrier reserves the right to ship barrels in a cycle different from which they were nominated, to achieve optimum utilization of its pipeline system.

4. Colonial explains that the timing of deliveries into or out of tank farms and other operational events affect the availability of fuel at specific times. Consequently, shipped petroleum products may need to be rearranged to achieve optimum utilization of the pipeline and avoid impact to shippers. Colonial states the proposed language clarifies, but does not alter Colonial's current practice.

Interventions and Protests

5. The Commission grants all unopposed motions to intervene filed before the issuance date of this order.

6. A protest was filed by NIC Holding Corporation (NIC) on November 17, 2015, challenging Colonial's proposed addition to Item 25(b). The remainder of Colonial's tariff filing is unopposed.

⁵ Item 35(c) amends language to reflect Colonial's new web Customer User Interface process which facilitates terminal operations.

⁶ Item 40(b) provides that Colonial will provide reasonable access for shippers or consignees that request to be present when their product is measured and tested. Item 40(c) is amended to remove shipper access to observe measurement and testing "[a]t any time during normal operations," and provides that shippers may observe and verify the procedures upon reasonable request. Colonial states the change reflects the advent of remote monitoring.

⁷ Item 60 modifies the loss provision specifying that any losses shall be settled by the carrier's account using the Gain/Loss Adjustment pricing methodology set forth in Item 75(a).

⁸ Item 71 provides compliance with state registration requirements. Item 71(a) requires shippers and consignees to have valid active federal excise and state motor fuel registrations, and will be responsible to furnish such proof upon request. Item 71(b) provides that all gasoline and distillate deliveries made into New York be made by registered companies.

7. NIC contends that although Colonial asserts it is simply clarifying unwritten procedures already in place, NIC is only aware of Colonial changing cycles of nominated barrels during *force majeure* events or due to specific operational issues, not for discretionary optimum pipeline utilization.⁹

8. NIC argues that the proposed tariff provision will create hardship for shippers who would remain uncertain when nominated barrels are actually transported or whether their nominations are delayed. NIC contends if shippers are uncertain when their nominated barrels will be transported, they cannot confidently enter into shipper commercial contracts, which are tied to the nomination cycle. NIC explains that suppliers and receivers typically agree upon the timing of a particular delivery based upon a shipper's nomination.

9. Additionally, NIC states if Colonial has complete discretion to ship barrels in any cycle in pursuit of system optimization, shippers can never be certain that they will receive transportation "upon reasonable request," in violation of the Interstate Commerce Act (ICA), which requires the provision of service to all potential shippers upon reasonable request.¹⁰ Moreover, NIC contends that the proposed tariff language may permit Colonial to delay a shipper's transportation in favor of another shipper, in contravention of ICA section 3(1) which bars undue preference of one shipper over another.

10. Alternatively, NIC states if the Commission declines to reject Colonial's proposal, it should require Colonial to specifically state the operational or optimization considerations and circumstances under which it may ship barrels in cycles different from those in which they are nominated in its tariff.

Response

11. Colonial filed a response on November 23, 2015. Colonial explains that it is periodically required to adjust the sequence of batches that are nominated, which results in some re-sequenced batches delivered in different cycles. Colonial explains that the pipeline's schedulers need flexibility to respond to operational conditions as they develop, and those conditions may require a delay in shipment to a subsequent 5-day cycle. For example, Colonial explains that a malfunctioning valve or issues with a terminal operation can require sequence changes. Additionally, Colonial explains that

⁹ NIC Protest at 4.

¹⁰ NIC Protest at 7, citing *Colonial Pipeline Co.*, 146 FERC ¶ 61,206, at P 2 (2014); 49 U.S.C. App. § 1(4).

real-time events may occur while the product is in the pipeline that can either accelerate or delay a movement.

12. Colonial argues that NIC exaggerates the significance of the challenged language. Colonial states that to the extent reasonably practicable, it commits to ship barrels in the cycle to which the shipper nominates, unless doing so would impede the optimum utilization of the pipeline system.

13. Colonial states that Item 25(b) simply clarifies an existing tariff provision in Item 25(c) which states that “[shipping schedules] may be modified from time to time to the extent reasonably desirable to facilitate the efficient and economical use and operation of carrier’s facilities and to reasonably accommodate shippers’ needs for transportation.”¹¹

14. Colonial contends the protest should be rejected on the ground that it relates to an existing practice and therefore, it may only be challenged through a complaint filed under section 13 of the ICA. Colonial argues that there is no merit to NIC’s claims that modification is likely to lead to undue discrimination and preference, with Colonial favoring one shipper or shippers in favor of others. Colonial argues the tariff modification is neutral in purpose and effect and confirms Colonial’s ability to ship barrels out of cycle. Colonial states that its modification is consistent with tariff language of other pipelines.

Discussion

15. The Commission accepts the proposed tariff, finding the proposed language in Item 25(b) to be just and reasonable, and a satisfactory clarification of Item 25(c) of Colonial’s tariff. Colonial has explained that it will continue to ship barrels in the cycle to which the shipper nominates, except in very limited circumstances. The Commission finds that adequate flexibility for pipelines to cope with unforeseen conditions is an operational necessity. It is still somewhat unclear if system optimization is a broader concept or the equivalent to operational necessity. Even if it is somewhat broader, it is understandable that Colonial, in operating a batched system, may need to optimize shipments of a particular product at certain times to fully utilize the pipeline, and it may be difficult to define each particular circumstance that might give rise to such a need. So long as these non-operational, optimization events are relatively rare, as they seem to have been, and so long as each shipper of the particular product whose planned cycle for shipment is delayed is subjected to similar treatment, there would not appear to be any undue discrimination under the ICA.

¹¹ FERC Tariff 98.2.0 at Item 25(c), Docket No. IS15-403-000.

16. However, as the quoted language from the existing tariff provision makes clear, any such non-operationally needed “optimization” cannot unreasonably interfere with shippers’ needs for transportation as nominated.

17. To minimize any impact on shippers of the memorialization of this balance between shippers’ needs for transportation, and the pipeline’s operational and optimization needs, the Commission directs Colonial to take all necessary steps to apprise shippers as soon as possible in instances when nominated barrels will be delivered in a different cycle, and the reason for the change. Such communication should enable shippers the opportunity to inform buyers and receivers regarding those unexpected circumstances when changes to the nominated cycle may be required. Colonial should also be forthcoming with its shippers in explaining why the cycle change was required and who has been affected. In this way, shippers will have a basis for assessing the reasonableness of the delayed cycling of their shipment, and whether the delay was fairly applied to all similarly situated shippers without any undue discrimination or preference.

The Commission orders:

Colonial’s proposed tariff is accepted, consistent with the understandings discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.