

155 FERC ¶ 61,187  
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. IS16-259-000

**ORDER REJECTING TARIFF**

(Issued May 19, 2016)

1. On April 22, 2016, Colonial Pipeline Company (Colonial) filed FERC Tariff No. 98.25.0, Rules and Regulations Tariff, cancelling FERC Tariff No. 98.24.0 (Docket No. IS16-258-000) and issued in lieu of FERC Tariff No. 98.22.0 (Docket No. IS16-61-000), which is suspended. Colonial requests an effective date of May 23, 2016. For the reasons discussed below, Colonial's revised tariff is rejected.

**Background**

2. Colonial states that FERC Tariff No. 98.25.0 amends the definition of New Shipper and Regular Shipper in Item 31 (Capacity Allocation Program) of Colonial's rules and regulations to provide that "[d]uring the pendency of a history transfer, a shipper shall have Regular Shipper status." Colonial states that the purpose of this change is to clarify the impact of a history transfer on shipper status. Colonial states that when a shipper transfers its history, it takes twelve to fourteen months to complete the transfer to the receiving shipper. Colonial states that during the transfer period, the transferor has Regular Shipper status and is not eligible for New Shipper status on the segments to which the history transfer applies. Colonial states its consistent practice is to treat a shipper that is transferring its history to another party as ineligible for New Shipper status until the transfer is fully completed. Colonial states that the amendment to Item 31 is intended to memorialize Colonial's existing practice in order to provide greater clarity and transparency to shippers.

**Interventions and Protests**

3. The filing was protested by Concept Petroleum Marketing, LLC (Concept) and Kelly Energy Logistics Group, LLC (Kelly), and Tricon Energy Ltd. (Tricon) and Rockbriar Partners Inc. (Rockbriar). The protesters assert that Colonial's proposed revision locks New Shippers out of Colonial's common carrier pipeline for 14 months

based on an unpublished “policy” of Colonial. The protesters asserts that while the market for shipper histories is facilitated by Colonial, the protocols governing it are entirely outside the tariff and have never been subject to Commission review. For example, Colonial has prepared a standard “History Transfer Request Form,” available on its website but nowhere referenced in its tariff. Protesters assert that Colonial has a “FAQ” concerning history transfers, which specifies certain rules, likewise not referenced in the tariff, including that a New Shipper engaging in a history transfer must transfer its entire history, while a Regular Shipper may transfer only a portion of its history, and therefore can continue to ship on the pipeline after the transfer. The protesters assert that the entire history transfer process is administered by Colonial, which actively manages the transfer process and its impact on eligibility to ship.

4. The protesters contend that the Commission should affirmatively find that the revision does not and cannot apply to history transfers initiated prior to the effective date ultimately prescribed by the Commission. Although unclear from the filing, the protesters submit that Colonial’s actions to date suggest that Colonial views the tariff revisions as ministerial in nature, effectively “papering up” a practice that Colonial has been applying (without any legal right to do so) and intends to continue to apply, irrespective of the “effective date” designated by the Commission.

5. The protesters submit that whatever its intended import, the “memorialization” of a material, and previously unpublished, restriction of service cannot take effect prior to Commission approval, consistent with the ICA, Commission regulations, and applicable precedent. The protesters contend that it is axiomatic that a tariff revision cannot become effective, or be applied to events occurring prior to Commission acceptance of the revision. The protesters argue that this is the essence of the filed rate doctrine.

6. The protesters assert that the Commission should clearly state that Colonial cannot enforce its history transfer restriction policy prior to the effective date of its tariff filing. In addition, to permit shippers time to adjust their business plans to the new policy, the Commission should suspend implementation of the tariff beyond the nominal suspension period requested by Colonial.

### **Colonial’s Answer**

7. Colonial asserts that the protesters do not dispute that the essential purpose of the tariff filing is to preserve the integrity of the Capacity Allocation Program. Colonial contends that the protesters mischaracterize the tariff filing as a provision that locks a certain class of shippers, called New Shippers, out of Colonial’s common carrier pipeline for 14 months. Colonial submits that its tariff filing does not foreclose any shipper from accessing the system. Colonial asserts that the provision is not applied on a class basis. Colonial states that the policy applies to shippers engaged in a history transfer regardless of whether they are a New or Regular Shipper. Colonial asserts that transferring shippers remain shippers on Colonial. Colonial submits that protesters fail to present any basis for

finding that the tariff filing violates the Interstate Commerce Act (ICA). Colonial states that the tariff filing merely provides additional clarification regarding Colonial's existing, unchanged history transfer practice, by adding language that is just, reasonable and non-discriminatory. Therefore, Colonial contends the protests should be dismissed and the tariff filing should be accepted without suspension or modification.

8. Consistent with industry practice, Colonial's submits that its currently effective tariff does not set out the particulars of how history transfers will be managed. Colonial asserts that pipelines are not required to publish every minute detail of their operations and practices in their tariff.

9. Colonial asserts that the protesters' opposition is to Colonial's past practice of implementing history transfers, rather than the tariff filing in the instant docket. Colonial contends that a filing challenging an existing practice, rather than a tariff publication, is properly made as a complaint, not a protest.

### **Discussion**

10. Colonial is attempting to memorialize its existing practice that is not in the tariff, has no references in the tariff and has not been subject to review by the Commission or shippers contrary to existing Commission precedent. In *Enterprise TE Products Pipeline Company LLC*, the Commission stated as follows:

Enterprise TEPPCO is correct in stating that the Commission has held that an oil pipeline is not required to include all of its policies verbatim in the tariff as long as each policy is described in the tariff and its details are contained in a document that is available to shippers or prospective shippers upon request. However, the cases cited by Enterprise TEPPCO make it clear that the Commission also requires that those policies and any subsequent revisions to those policies be filed with the Commission so that the Commission and shippers can review them before the policies and any changes to them are placed in effect.<sup>1</sup>

11. Colonial has described its tariff filing as memorializing its existing practice of treating new shippers as regular shippers upon a history transfer by new shippers. This description, however, falls far short of an explanation of how its un-reviewed and unapproved history transfer practice is applied, how its application impacts capacity allocation on Colonial's system, and how that practice and, as a result, Colonial's shippers are affected by inclusion in Colonial's tariff of the one isolated provision

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<sup>1</sup>*Enterprise TE Products Pipeline Co. LLC*, 131 FERC ¶ 61,134, at P 11 (2010).

Colonial seeks to add here.<sup>2</sup> Colonial's asserted existing practice or, as described by the protesters, unpublished policy, has never been reviewed by the Commission and therefore the subject filing, to reflect in Colonial's tariff a portion<sup>3</sup> of this un-reviewed methodology, is rejected. The Commission recognizes that Tricon and Rockbriar filed a complaint along with its protest to Colonial's instant filing. The complaint was given a separate docket number, OR16-17-000. Accordingly, substantive issues raised concerning various aspects of Colonial's history transfer practice, including requiring Colonial to submit its history transfer practice for Commission review, will be addressed in that proceeding.<sup>4</sup>

The Commission orders:

Colonial's FERC Tariff No. 98.25.0 is rejected.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>2</sup> See 18 C.F.R. § 341.2(c) (2015).

<sup>3</sup> Based on attachments to the protests, it appears that there may be various practices related to history transfer, and therefore affecting Colonial's prorationing policy and resulting capacity allocation that have not been subject to appropriate review before the Commission.

<sup>4</sup> Colonial's history transfer and prorationing provisions are currently being examined by the Commission in Docket No. IS16-61-000. The tariff in Docket No. IS16-61-000 was suspended for seven months, to be effective July 4, 2016, and the post-technical conference comments are pending before the Commission.