

156 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tricon Energy Ltd. and Rockbriar Partners Inc.

Docket No. OR16-17-000

v.

Colonial Pipeline Company

ORDER ON COMPLAINT

(Issued September 13, 2016)

1. On May 9, 2016, Tricon Energy Ltd. (Tricon) and Rockbriar Partners Inc. (Rockbriar) (collectively Complainants) filed a protest, complaint, and motion to intervene¹ pursuant to Rules 206, 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission) (18 C.F.R. §§ 385.206, 385.211 and 385.214 (2015)), sections 13 and 15 of the Interstate Commerce Act (ICA) (49 U.S.C. App. §§ 13 and 15 (1988)), and the Commission's oil pipeline regulations at 18 C.F.R. Part 343 (2015). Complainants allege that it is unlawful for Colonial Pipeline Company (Colonial) to enforce the tariff modification filed by Colonial in Docket No. IS16-259-000 prior to Commission review and acceptance of that modification. The complaint portion of Complainants' pleading concerns the existing practice that Colonial was attempting to memorialize in Tariff No. 98.25.0.²

¹ Complainants May 9, 2016 Motion to Intervene, Protest, and Complaint of Tricon Energy Ltd. and Rockbriar Partners Inc. to Colonial Pipeline Company's Tariff Revisions (Complaint). Complainants sought to intervene in Docket No. IS16-259-000, involving FERC Tariff No. 98.25.0, Colonial's effort to memorialize and clarify the impact of a history transfer on shipper status. That tariff was rejected on May 19, 2016. *Colonial Pipeline Co.*, 155 FERC ¶ 61,187 (2016) (May 19 Order). Issues raised in the Complaint concerning the potential ramifications of the Commission's acceptance of Tariff No. 98.25.0 are therefore moot.

² Complaint at 9.

2. For the reasons discussed below, the Commission requires additional information before rendering a decision on the Complaint. Therefore, Colonial, as well as other persons to whom data requests and requests for production of documents are directed, are instructed to file the information directed herein within 30 days of the date of this order. The Commission will defer action on the complaint until it receives and reviews the responses to the data requests and requests for production of documents.

Background

3. Colonial owns and operates a common carrier refined products pipeline system that extends from Houston, Texas to Linden, New Jersey.³ For some time the Main Lines on Colonial's system (Line 1 and Line 2) have received total shipper nominations that exceed the capacity of the particular Line.⁴ In such instances, those lines have been subject to prorationing.⁵

4. When Colonial is subject to prorationing, shippers are differentiated between Regular Shippers and New Shippers. According to Colonial, a New Shipper is "a shipper, other than a Regular Shipper, an affiliate of a Regular Shipper or other New Shipper that has been approved by carrier for shipments on a segment or segments, subject to Shipper meeting the requirements of Item 25(a)" of Colonial's tariff.⁶ Regular Shippers are defined by Colonial as "all Shippers other than New Shippers."⁷ When in prorationing, the allocation of space to Regular Shippers is based on their history of movements on the system during a rolling 12-month base period.⁸ New Shippers, by comparison, are allocated a fixed 5 percent of the capacity of the Main Line subject to apportionment and, if New Shipper nominations exceed the 5 percent level, all New Shippers participate in a lottery to allocate the available New Shipper batches.⁹

³ Colonial Pipeline Company May 31, 2016 Answer to Complaint of Tricon Energy Ltd. and Rockbriar Partners Inc. at 5 (Answer).

⁴ *Id.* at 6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* A Shipper's history is the total number of ticketed barrels that the shipper has moved over the base period, defined as "[t]he period of twelve (12) months ending one month prior to the month of anticipated segment capacity constraint." *Id.* n.3, citing FERC Tariff No. 98.23.0 Item 31 (Docket No. IS16-176-000).

⁹ *Id.* at 6.

According to Colonial, there is a varying probability of whether New Shippers will receive a batch pursuant to the lottery.¹⁰

5. Shippers on Colonial may also transfer their history. Colonial states that its history transfer procedure operates on the same rolling 12-month basis as the allocation procedure, and takes a full 14 months to complete.¹¹ Colonial states that because allocations from the lottery create a variable per cycle allocation, history transfer must be recalculated monthly over the 12-month base period to reflect the outcome of the lottery.¹²

6. On November 3, 2015, in Docket No. IS16-61-000, Colonial filed FERC Tariff No. 98.22.0, to be effective December 4, 2015. Colonial proposed to modify certain procedures relating to minimum tender and the allocation of pipeline capacity as follows: (1) defining the circumstances under which a shipper's volume history may be transferred; (2) changing the rounding multiple; and (3) revising the lottery process for allocating capacity to New Shippers. On December 3, 2015, the Commission issued an order accepting and suspending the tariff to be effective July 4, 2016, and established a technical conference.¹³ A technical conference was held on March 8, 2016. In light of concerns expressed at the technical conference, on March 23, 2016, Colonial submitted a filing proposing certain refinements to its filed tariff provisions. Initial post-technical conference comments were filed on April 8, 2016, and reply post-technical conference comments were filed on April 22, 2016.

7. On April 21, 2016, in Docket No. IS16-258-000, Colonial filed FERC Tariff No. 98.24.0. On April 22, 2016, in Docket No. IS16-259-000, Colonial filed FERC Tariff No. 98.25.0, Rules and Regulations Tariff, cancelling FERC Tariff No. 98.24.0 in Docket No. IS16-258-000 and being issued, in Colonial's term, "in lieu of" FERC Tariff No. 98.22.0 (Docket No. IS16-61-000), which at the time had been suspended by the Commission.¹⁴ Colonial stated that FERC Tariff No. 98.25.0 amended the definition of New Shipper and Regular Shipper in Item 31 (Capacity Allocation Program) of

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 10-11.

¹³ *Colonial Pipeline Co.*, 153 FERC ¶ 61,270 (2015).

¹⁴ Colonial did not propose that Tariff No. 98.25.0 would replace Tariff No. 98.22.0. Colonial requested that, if FERC Tariff No. 98.25.0 was not made effective by the requested date of May 23, 2016, that both FERC Tariffs, 98.22.0 and 98.25.0, become effective concurrently no later than July 4, 2016.

Colonial's rules and regulations to provide that "[d]uring the pendency of a history transfer, a shipper shall have Regular Shipper status." Colonial stated that the purpose of this change was to clarify the impact of a history transfer on shipper status. Colonial stated that when a shipper transfers its history, it takes twelve to fourteen months to complete the transfer to the receiving shipper. Colonial stated 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 stated 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 stated that the amendment to Item 31 is intended to memorialize Colonial's existing practice in order to provide greater clarity and transparency to shippers.

8. On May 19, 2016, the Commission rejected the tariff in Docket No. IS16-259-000,¹⁵ holding that Colonial's existing practice or, as described by the protesters in that proceeding, unpublished policy, of treating new shippers as regular shippers upon a history transfer by new shippers, has never been reviewed by the Commission.¹⁶ The Commission noted that substantive issues raised concerning various aspects of Colonial's history transfer practice would be addressed in the present proceeding, including requiring Colonial to submit its history transfer practice for Commission review.¹⁷

9. On July 1, 2016, the Commission rejected the tariff in Docket No. IS16-61-000.¹⁸ The Commission found that although pipelines have reasonable leeway in crafting a proration policy based on history or some other approach, such leeway is not limitless but is bound by the statutory requirements of the ICA.¹⁹ The Commission determined that Colonial's proposal violated the ICA by attempting to protect its large Regular Shippers from having their allocations of constrained capacity reduced in situations where the demand for service exceeds the capacity of the pipeline system.²⁰ The Commission held that Colonial's proposals were inconsistent with Colonial's common carrier obligation, unjust and unreasonable, and created undue preferences or advantages for large Regular Shippers, and were accordingly rejected.²¹ A number of parties in

¹⁵ May 19 Order, 155 FERC ¶ 61,187.

¹⁶ *Id.* P 11.

¹⁷ *Id.*

¹⁸ *Colonial Pipeline Co.*, 156 FERC ¶ 61,001 (2016).

¹⁹ *Id.* P 26.

²⁰ *Id.*

²¹ *Id.* P 27.

Docket No. IS16-61-000 sought rehearing of the July 1 Order, and those requests for rehearing are currently pending before the Commission.

Complaint

10. Complainants state that the sole question raised by the Complaint is whether, consistent with the ICA and the Commission's regulations, Colonial may apply its so-called "lockout policy" prior to Commission review and acceptance of Colonial's tariff.²² Complainants argue that Colonial's existing practice of preventing New Shippers that transfer shipper histories from participating in the lottery for 14 months cannot apply to transfers made prior to the Commission's approval of Colonial's existing practice.²³ Complainants argue that until Colonial's policy is set forth in a tariff and accepted by the Commission, enforcement of the policy violates the ICA and Commission regulations.²⁴

11. Complainants request that the Commission affirmatively find that Colonial cannot apply the lockout policy to New Shippers' history transfers that were initiated prior to the acceptance of a tariff setting forth the history transfer policy.²⁵ Complainants state that because Colonial does not publish the results of its lottery or statistics revealing the precise chances of winning the lottery, it is extremely difficult to quantify financial harm.²⁶

Public Notice and Responsive Pleadings

12. Notice of the Complaint was issued on May 13, 2016, with interventions and protests due on or before May 31, 2016. On May 9, 2016, Concept Petroleum Marketing, LLC (Concept) and Kelly Energy Logistics Group, LLC (Kelly) filed a Motion to Intervene, Protest to Colonial Pipeline Company's Tariff Revision, and Comments in Support of Complaint.²⁷

²² Complaint at 14.

²³ *Id.* at 12.

²⁴ *Id.* at 13, citing 49 U.S.C. App. § 1(4) (1988) (service must be provided upon reasonable request), 49 U.S.C. App. § 6(1) (1988) (any regulations affecting value of service must be set forth in tariff), 18 C.F.R. § 341.0(b)(1) (2016) (publication of tariff), 18 C.F.R. § 341.3(b)(6) (2016) (all rules affecting rates must be included in tariff), 18 C.F.R. § 341.8 (2016) (publication of prorationing policies).

²⁵ *Id.* at 14-15.

²⁶ *Id.* at 13.

²⁷ The protest concerned the tariff filing in Docket No. IS16-259-000.

13. On May 31, 2016, Colonial filed its Answer. Colonial first argues that its history transfer policies involve an administrative service that is non-jurisdictional and not required to be published in Colonial's tariff.²⁸ Colonial states that these services are provided for the convenience of the shipper, but do not affect the physical transportation of product.²⁹ Colonial claims that under Commission precedent, such ancillary services are not subject to the Commission's jurisdiction,³⁰ and therefore need not be published in Colonial's tariff.³¹ Colonial also argues that the Commission's regulations do not require that Colonial's history transfer program be included in its tariff, as it is "not part of the prorationing policy."³²

14. Colonial argues that regardless of whether the history transfer policy is jurisdictional or needs to be published in Colonial's tariff, the policy is reasonable, non-discriminatory, and consistent with the ICA.³³ Colonial states that its existing practice is non-discriminatory because it applies to all shippers who transfer history, not simply New Shippers.³⁴ Colonial also argues that the policy does not foreclose access to the pipeline in violation of its common carrier obligations.³⁵

15. Colonial also states that the Complaint is procedurally deficient, and should be dismissed.³⁶ Colonial claims that the Complainants failed to make a good faith effort to quantify the financial impact or burden created as a result of action or inaction, as required by Rule 206(b)(4).³⁷ Colonial also claims that Complainants failed to indicate

²⁸ Answer at 19.

²⁹ *Id.*

³⁰ *Id.* at 20-21, citing *Kerr-McGee Ref. Corp. v. Williams Pipe Line Co.*, 72 FERC ¶ 61,274, at 62,199 (1995) (*Kerr-McGee*).

³¹ *Id.* at 20, citing *Kerr-McGee*, 72 FERC at 62,199.

³² *Id.* at 24, citing 18 C.F.R. § 341.8 (2016).

³³ *Id.* at 27.

³⁴ *Id.* at 28.

³⁵ *Id.*

³⁶ *Id.* at 31.

³⁷ *Id.* at 32, citing 18 C.F.R. § 385.206(b)(4) (2016).

the practical, operational or other nonfinancial impacts imposed as a result of the action or inaction, in violation of Rule 206(b)(5).³⁸

16. On July 8, 2016, Flint Hills Resources, LP (Flint Hills) filed a Motion for Leave to Intervene Out of Time and Protest. Flint Hills argues that it has good cause for intervening out of time. Flint Hills argues that while it believed that the Complaint in Docket No. OR16-17-000 would address a very limited issue regarding history transfer practices related to New Shippers, the Commission's Order Rejecting Tariff in Docket No. IS16-61-000 appeared to broaden the matters to be addressed.³⁹ Flint Hills claims that the Commission should review in the present proceeding Colonial's treatment of shipments originating at Moundville, AL in relation to Colonial's Calculated Cycle Historical Allocation and the Capacity Allocation Fee.

17. On July 13, 2016, Colonial filed a response to Flint Hills' motion to intervene out of time and protest. Colonial states that while Flint Hills' pleading does not satisfy the requirements for a protest, Colonial is amenable to having the pleading treated as a complaint and will "respond to the substance of [Flint Hills'] allegations within the period provided by the regulations for answers to complaints."⁴⁰ Colonial states that if the Commission does treat Flint Hills' pleading as a complaint, it should be docketed and processed as an entirely separate matter.⁴¹ Colonial does not oppose Flint Hills' motion to intervene out of time in Docket No. OR16-17-000 "provided that its intervention not be permitted to expand the issues that would otherwise be at issue in that proceeding."⁴²

18. On July 15, 2016, Complainants, Concept and Kelly (collectively Movants) filed a Motion for Expedited Commission Action or, in the Alternative, Motion to Lodge (Motion to Lodge). As background, in response to the Commission's May 19 Order in Docket No. IS16-259-000, Colonial filed an Expedited Request for Clarification or, in the Alternative, Rehearing (Expedited Request). Colonial requested that the Commission clarify on an expedited basis that the May 19 Order was not intended to require

³⁸ *Id.* at 33, citing 18 C.F.R. § 385.206(b)(5) (2016).

³⁹ Flint Hills July 8, 2016 Motion for Leave to Intervene Out Of Time and Protest at 2, citing *Colonial Pipeline Co.*, 156 FERC ¶ 61,001 at P 21 n.10.

⁴⁰ Colonial July 13, 2016 Response to Motion of Flint Hills Resources, L.P. for Leave to Intervene Out of Time and Protest at 2.

⁴¹ *Id.*

⁴² *Id.* at 2-3. Colonial repeated these arguments in its July 28, 2016 Conditional Answer to Complaint of Flint Hills Resources, L.P., and asked that the Complaint be dismissed.

immediate modification of the existing administration of Colonial's history transfer process.⁴³ Colonial sought clarification that the Commission did not intend the May 19 Order to require discontinuance of all history transfers on Colonial's system pending the effective date of the tariff proposed in Docket No. IS16-61-000.⁴⁴ Colonial noted that the Commission stated in its May 19 Order that substantive issues concerning aspects of Colonial's history transfer practice would be addressed in the present proceeding.⁴⁵

19. On May 27, 2016, Movants filed an Answer to the Expedited Request. Movants argue that the Commission should deny Colonial's request and confirm that Colonial may not continue to implement the rejected lottery eligibility condition concerning history transfers of New Shippers.⁴⁶ Movants state that the Commission should direct Colonial to make immediate process changes to allow New Shippers to re-enter the New Shipper lottery in the next nominating cycle.⁴⁷ On May 31, 2016, Colonial filed a Motion for Leave to File Reply and Reply to the May 27, 2016 Answer, reiterating its arguments set forth in the Expedited Request.

20. Thus, due to the parties' disagreement on the effect of the May 19 Order in Docket No. IS16-259-000, Movants filed the above-noted Motion to Lodge in both Docket No. IS16-259-001 and the present docket requesting that the Commission either (1) rule on Colonial's Expedited Request for Clarification or Rehearing, or (2) lodge Colonial's Expedited Request, and all responsive pleadings, in the present docket, and summarily determine in this docket whether Colonial may continue to enforce the lottery eligibility restriction in the absence of Commission-approved tariff provisions governing such policy.⁴⁸ Movants state that lodging these pleadings in the present docket will "provide the Commission the necessary record to summarily decide the legality of Colonial's ongoing implementation of the lottery eligibility restriction, without regard to any other issues that the Commission may ultimately deem cognizable in [this] docket."⁴⁹

⁴³ Expedited Request at 2.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 11.

⁴⁶ Answer to the Expedited Request at 4.

⁴⁷ *Id.* at 4-5.

⁴⁸ Motion to Lodge at 2.

⁴⁹ *Id.* at 5.

Discussion

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵⁰ 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. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Commission notes that, as to Colonial's statement that it would not oppose Flint Hills' motion to intervene out-of-time if it did not expand the issues otherwise at issue in this proceeding, the scope of this investigation was not expanded by Flint Hills' pleadings. The issues raised by Flint Hills involve Colonial's history transfer practice, which is the subject of our investigation initiated below. The Commission therefore finds that it is appropriate to examine Flint Hills' claims in the present docket and we accept Flint Hills' motion to intervene out-of-time.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority.⁵¹ We will accept Colonial's Reply to the May 27, 2016 Answer because it has provided information that assisted us in our decision-making process.

23. The Commission will grant the Motion to Lodge. Colonial's Expedited Request, the May 27, 2016 Answer to the Expedited Request, and Colonial's Motion for Leave to File Reply and Reply to the May 27, 2016 Answer, which the Commission grants, are hereby lodged into the present docket. The information in these pleadings will assist the Commission in its decision-making and therefore will be entered into the record.⁵²

24. The Complaint, as well as the numerous pleadings in Docket Nos. IS16-61-000 and IS16-259-000, raise issues that warrant further investigation by the Commission. The Commission requires additional information concerning the allocation of capacity on Colonial's system. Therefore, the Commission requires the parties identified in the attached data requests and requests for production of documents to provide the information specified below. The Commission will defer action on the Complaint until such time as it receives sufficient information from the data requests and requests for production of documents to make a determination, as the information provided will

⁵⁰ 18 C.F.R. § 385.214 (2016).

⁵¹ 18 C.F.R. § 385.213(a)(2) (2016).

⁵² See *NextEra Energy Resources, LLC*, 142 FERC ¶ 61,043, at P 20 (2013).

inform the Commission's decision as to whether, and to what extent, Colonial's existing practices are permissible under the Commission's regulations and the ICA.⁵³

25. The Commission's authority to undertake this investigation, and to require the production of documents sought in the attached data requests and requests for production of documents, is well established. Section 12 of the ICA provides the Commission with the authority to obtain from carriers such information as the Commission deems necessary to carry out the provisions of the ICA.⁵⁴ It is also not necessary that the investigation be part of an administrative hearing, but can take place either prior to such a hearing or, as here, associated with a complaint.⁵⁵

26. The scope of this investigation is not limited to the issues raised in the Complaint. The Commission is investigating the allocation of capacity on Colonial's system, including but not limited to history transfers, to determine whether that program and any related policy or program is consistent with the ICA. The Commission has discretion in determining both the scope of an investigation as well as what information it will require when conducting an investigation.⁵⁶ The Commission will also seek information necessary for determining whether and to what extent Colonial's policies on the allocation of capacity are jurisdictional, and to what extent they must be set forth in Colonial's tariffs. It is within the Commission's authority to seek information when

⁵³ The Commission will at that time also rule on Colonial's allegation that the Complaint is procedurally deficient under Rule 206.

⁵⁴ 49 U.S.C. App. § 12(1)(a) (1988).

⁵⁵ See *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 209 (1946) (finding that it is not necessary that an investigation be associated with a specific charge or complaint, but that the investigation be for a lawfully authorized purpose, within the power of Congress to command); *Harriman v. I.C.C.*, 211 U.S. 407, 419 (1908) (determining that Section 12 of the ICA applies to both complaint proceedings as well as matters that might have been made the object of complaint), *cited in Hunt Foods & Industries, Inc. v. F.T.C.*, 286 F.2d 803, 809 (9th Cir. 1960) (finding that agencies have the authority to issue investigative proceedings prior to the issuance of a complaint).

⁵⁶ *Adams v. F.T.C.*, 296 F.2d 861, 866 (8th Cir. 1961) (stating that there is general unanimity among the courts that an administrative agency may seek information if the inquiry is (1) within the authority of the agency; (2) the demand is not too indefinite, and (3) the information sought is reasonably relevant).

making the determination of whether a specific practice is or is not within the Commission's jurisdiction.⁵⁷

27. The Commission is also not limiting its data requests and requests for document production to Colonial.⁵⁸ The Commission's authority to compel the production of documents is not limited to carriers. The Commission expects that shippers on Colonial's system may have responsive documents that will assist the Commission in its investigation. Nor is the Commission's investigation limited to parties to the present proceeding. The Commission may seek any documents "relating to any matter under investigation"⁵⁹ and may seek information from third persons who are not a party to the investigation.⁶⁰ The Commission has issued subpoenas to compel both parties and non-parties to produce documents.⁶¹ The Commission will note that, given the scope of the investigation now being commenced, any person pursuing late intervention pursuant to Rule 214(d) should do so as early in the process as possible, and identify how such late intervention meets the requirements of Rule 214(d)(1).

28. As stated above, Colonial is instructed to file the information directed herein within 30 days of the date of this order. Other persons to whom data requests and requests for production of documents are directed also have 30 days to provide responses. Parties who wish to file an answer to the responses to the data requests and requests for

⁵⁷ See *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 508-09 (1943) (finding that an administrative agency can inquire into whether a situation is within its statutory authority to regulate).

⁵⁸ The Commission notes that upon reviewing responses to the data requests and requests for production of documents herein, staff may issue additional requests to obtain any needed information for the Commission to rule on these proceedings.

⁵⁹ 49 U.S.C. App. § 12(1)(a) (1988).

⁶⁰ *Comet Electronics, Inc. v. U.S.*, 381 F.Supp. 1233, 1238-39 (W.D. Mo. 1974) (finding that the Interstate Commerce Commission's authority to subpoena witnesses in connection with investigations under the ICA extends to persons who are not parties but who may be able to produce documents which may be relevant to a proper investigation).

⁶¹ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 39 FERC ¶ 61,221 (1987); *Tennessee Gas Pipeline Co.*, 23 FERC ¶ 61,216 (1983); *Northern Border Pipeline Co.*, 116 FERC ¶ 63,019 (2006); *Williams Natural Gas Co.*, 73 FERC ¶ 63,008 (1995); *Central Louisiana Electric Co., Inc.*, 64 FERC ¶ 63,020 (1993).

production of documents provided herein may do so within 21 days after the information and documents directed herein are filed with the Commission.⁶²

The Commission orders:

(A) All persons to whom data requests and requests for production of documents are directed shall respond within 30 days from the date of this order.

(B) Other parties may file answers to these responses within 21 days after the information and documents directed herein are filed with the Commission.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶² See, e.g., *Chevron U.S.A. Inc. v. Kinder Morgan Louisiana Pipeline LLC*, 146 FERC ¶ 61,104, at P 4 (2014) (establishing timelines to respond to data requests issued by the Commission in response to a complaint).

APPENDIX

FIRST SET OF DATA REQUESTS AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO COLONIAL PIPELINE COMPANY (COLONIAL)

1. Provide an electronic copy of the current version of Colonial's shipper manual and all previous versions dating back to January 1, 2012.
2. Provide an electronic copy of the current version of Colonial's Frequently Asked Questions (FAQ) found on its website and all previous versions dating back to January 1, 2012. Identify and explain any differences between the FAQ guidance and any of Colonial's practices, policies, manuals, or directives.
 - Identify and provide all specific manuals or directives a shipper on Colonial must refer to in order to obtain a complete understanding of Colonial's prorating policies, including history transfers and the implications such transfers have on that shipper's ability to transport product on Colonial.
3. Provide electronic copies of all policies, practices, manuals, directives, memoranda, or internal communications dating back to January 1, 2012 that address Colonial's operational/internal practices with respect to:
 - New Shipper Lottery
 - New Shipper History Transfers
 - Regular Shipper History Transfers
4. Are all origins and destinations treated the same for the purpose of developing Shipper History? If no, please list all origins and destinations, and describe the differences in their treatment and the rationale for the difference. Provide electronic copies of all policies, manuals, directives, memoranda, or internal communications that address Colonial's implementation of these operational/internal practices.
5. Are all origins and destinations treated the same for the purpose of assessing fees and/or charges and/or penalties? If no, please list all origins and destinations, and describe the differences in their treatment and the rationale for the difference. Provide electronic copies of all policies, manuals, directives, memoranda, or

internal communications that address Colonial's implementation of these operational/internal practices.

6. List and describe all policies, procedures, practices, and directives that are not available on Colonial's tariff or public website, or otherwise provided in response to Questions 1 through 5 that address Colonial's operational/internal practices with respect to Shipper History, fees, rules of service, Shipper History Transfers, and New Shipper Lottery.
7. Regarding Colonial's March 9, 2016, power point presentation, slide number 14, please explain why Colonial accepts partial History Transfers from Regular Shippers and not from New Shippers.
8. Since the beginning of the lottery process, state how many New Shippers have become Regular Shippers solely through (1) their own lottery wins (as opposed to through History Transfer Purchases), (2) History Transfer Purchases, and (3) a combination of lottery wins and History Transfer Purchases.
9. In total, how many New Shippers have participated in the New Shipper Lottery since it commenced? To avoid double counting, please count each New Shipper only once in the total.
10. Since January 1, 2012, list the dates of every New Shipper Lottery, the number of New Shippers that participated in each lottery, and the number of New Shippers that won in each lottery.
11. Since January 1, 2012, for each class of shipper (Regular and New), please provide the total number of shippers and of those how many have transferred history. If during this time period a shipper has multiple transfers, please count that shipper just once.
12. How many Regular Shippers have affiliates that are New Shippers?
 - Of these, how many Regular Shippers have a single affiliate that is a New Shipper? How many have multiple affiliates that are New Shippers?

13. Produce a copy of Colonial's document retention program, and produce a copy of any guideline, policy or manual describing such program. If no such program exists, so state.

FIRST SET OF DATA REQUESTS AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO TRICON ENERGY LTD. AND ROCKBRIAR PARTNERS INC.

1. Provide any documents currently within your possession that are responsive to the First Set of Data Requests and Requests for Production of Documents to Colonial Pipe Line Company.

FIRST SET OF DATA REQUESTS AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO FLINT HILLS RESOURCES, LP

1. Provide any documents currently within your possession that are responsive to the First Set of Data Requests and Requests for Production of Documents to Colonial Pipe Line Company.

General Instructions and Definitions

The following General Instructions and Definitions apply to each document request attached to this order, as well as subsequent document requests issued in this docket.

A. General Instructions

- a. All responses to the attached data requests and requests for production of documents must be accompanied by one or more affidavits attesting to the truthfulness, completeness and accuracy of the responses.
- b. Each affiant must have personal knowledge of the content of the responses to which his or her affidavit applies.
- c. Each written response should designate the respective data request and requests for production of documents and subpart or portion of the item under which it is being provided.
- d. The terms “and” and “or” should be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of each question any information or document that might otherwise be considered to be beyond its scope.
- e. The singular form of a word should be interpreted as plural, and the plural form of a word should be interpreted as singular, whenever appropriate, in order to bring within the scope of each question any information or document which might otherwise be considered to be beyond its scope.
- f. If any document responsive to any question has been discarded, destroyed or is unavailable, state when, and explain why, such document was destroyed, discarded or is unavailable.
- g. If electronic versions of any document are not available, physical copies of said documents must be provided.
- h. All persons are hereby directed to preserve and maintain, and not to discard, modify or destroy, any and all documents and information related to the subject matter investigated in this docket.

B. Definitions

- a. The definitions applicable to these data requests and requests for production of documents must be consistent, where applicable, with those set forth in the most recent Commission-Accepted tariff for transportation on Colonial.

- b. "Affiliate" means another person which controls, is controlled by, or is under common control with, such person.
- c. "Communication(s)" includes all verbal and written communications of every kind, including, but not limited to, telephone calls, conferences, electronic mail and correspondence, and all documents and memoranda concerning the communication.
- d. "Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.
- e. "Documents" refers to the originals of all writings and records of every type in your possession, control, or custody, including but not limited to: testimony and exhibits, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photograph forms (including microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, and photocopies), maps, sheets, ledgers, transcripts, vouchers, accounting statements, budgets, work papers, engineering diagrams, communications, speeches, and all other records, written, electronic (including information on electronic or magnetic storage devices), mechanical, or otherwise, and drafts, attachments or appendices of any of the above.
- f. "Documents" includes copies of documents, where the originals are not in your possession, custody, or control. As to any document related to the matter herein that is not in your possession, but that you know or believe to exist, you are requested to identify and indicate to the best of your ability its present or last known location or custodian.
- g. "Documents" includes every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copies.
- h. "Documents" includes electronic data and records stored on computer equipment, including electronic devices which are capable of collecting, analyzing, creating, displaying, converting, storing, concealing or

transmitting electronic, magnetic, optical, or similar computer impulses or data. These devices include but are not limited to any data-processing hardware (such as central processing units, hard disks, memory typewriters, and self-contained "laptop" or "notebook" computers); internal and peripheral storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, CD-ROMs, printer buffers, Bernoulli drives, smart cards, memory calculators and other memory storage devices); peripheral input/output devices (such as printers and scanners); and related communications devices (such as modems, recording equipment, and RAM or ROM units).

- i. "Identification" and "identify" when used with respect to a document, includes (but is not limited to) stating the nature of the document (e.g., letter, memorandum, corporate minutes); the date, if known, on which the document was prepared; the title of the document; the general subject matter of the document; the number of pages in the document; the identity of each person who wrote, dictated, or otherwise participated in the preparation of the document; the identity of each person to whom the document was addressed; the location of the document; and the identity of the person having possession, custody, or control of the document. Identification of a document includes identifying all documents known or believed to exist whether or not they are in your custody.
- j. "Identification" and "identify" when used with respect to a person, includes, unless otherwise indicated, stating (i) his or her full name, (ii) his or her present title and position, (iii) his or her current daytime telephone number and address, and (iv) his or her present and prior connections or association with, the company in question.
- k. "Identification" and "identify" when used with respect to an electronic document or data, includes (but is not limited to) stating the computer software and computer related documentation used to create the document or data and the identity of the person(s) in charge of collecting, processing, programming (if any) and analyzing the electronic document or data.
- l. "Person" is defined as in Rule 102, 18 C.F.R. § 385.102(d) (2016).
- m. "Relating to" means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.