

158 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colonial Pipeline Company

Docket No. IS16-61-001

ORDER ON REHEARING

(Issued January 13, 2017)

1. In a July 1, 2016 Order Following Technical Conference Rejecting Tariff¹ the Commission rejected Colonial Pipeline Company's (Colonial) proposed tariff revisions filed on November 3, 2015 and March 23, 2016 concerning its procedures relating to minimum tender and the allocation of pipeline capacity. American Airlines, Inc. (American Airlines),² Colonial,³ R. Gordon Gooch,⁴ Marathon Petroleum Company (Marathon),⁵ and Murphy Oil USA, Inc. and TransMontaigne Product Services Inc. (Murphy and TransMontaigne),⁶ sought rehearing or clarification of the July 2016 Order.

¹ *Colonial Pipeline Co.*, 156 FERC ¶ 61,001 (2016) (July 2016 Order).

² American Airlines Inc. Rehearing Request, Docket No. IS16-61-001 (filed July 29, 2016) (American Rehearing Request).

³ Colonial Pipeline Company Rehearing Request, Docket No. IS16-61-001 (filed August 1, 2016) (Colonial Rehearing Request).

⁴ R. Gordon Gooch Rehearing Request, Docket No. IS16-61-001 (filed July 31, 2016) (Gooch Rehearing Request). R. Gordon Gooch also filed a separate Petition for Rulemaking in this docket, discussed below.

⁵ Marathon Petroleum Company Limited Rehearing Request or in the Alternative, Clarification, Docket No. IS16-61-001 (filed on August 1, 2016) (Marathon Rehearing Request).

⁶ Murphy Oil USA, Inc. and TransMontaigne Product Services Inc., Limited Rehearing Request, Docket No. IS16-61-001 (filed on August 1, 2016) (Murphy and TransMontaigne Rehearing Request).

A Motion for Leave to Answer and Answer to Requests for Rehearing was filed by Sunoco, LLC (Sunoco).⁷ The Commission dismisses or grants the requests for rehearing, as discussed in the body of this order.

I. Background

2. Colonial explains that since 2012, shipper demand has exceeded its available pipeline capacity, requiring Colonial to prorate capacity among its shippers pursuant to its tariff.⁸ Colonial contends that certain shippers have taken advantage of unintended loopholes, and have consequently obtained more capacity on Colonial's system than they may otherwise be entitled during the monthly nomination process.

3. On November 3, 2015, Colonial filed FERC Tariff No. 98.22.0 seeking to modify its procedures relating to minimum tender and the allocation of pipeline capacity. The proposed revisions defined when a shipper's volume history could be transferred, modified the rounding increment applied to Regular Shipper allocations from 25,000 barrels to 5,000 barrels, lowered the minimum tender that will be accepted on the Main Lines from 25,000 barrels to 15,000 barrels, and revised the lottery process for allocation of capacity for New Shippers on Colonial. On December 3, 2015, Colonial's FERC Tariff No. 98.22.0 was accepted and suspended subject to an off-the-record technical conference⁹ held on March 8, 2016. On March 23, 2016, Colonial responded to concerns raised at the technical conference by revising several tariff provisions, but not those relating to the applicable rounding increment and the minimum tender requirement.¹⁰ Initial post-technical conference comments were filed by April 8, 2016 and reply post-technical conference comments were filed by April 22, 2016.

4. In the July 2016 Order, the Commission rejected Colonial's initial and revised tariff proposals, and found Colonial failed to demonstrate that all the proposed tariff revisions, as a comprehensive package, were just and reasonable under section 15(7) of the Interstate Commerce Act (ICA).¹¹ The Commission found that Colonial's proposal

⁷ Sunoco, LLC, Answer to Requests for Rehearing, Docket No. IS16-61-001 (filed on August 4, 2016).

⁸ Colonial FERC Tariff No. 98.22.0, Docket No. IS16-61-000 (filed on November 3, 2015) (Colonial Initial Tariff Filing) at 2.

⁹ *Colonial Pipeline Co.*, 153 FERC ¶ 61,270 (2015) (*Colonial*).

¹⁰ Colonial FERC Tariff No. 98.22.0, Docket No. IS16-61-000 (filed on March 23, 2016) (Colonial Revised Tariff Filing).

¹¹ July 2016 Order, 156 FERC ¶ 61,001 at P 15 and n.5.

had the effect of protecting its large existing shippers from having their allocations of constrained capacity reduced in violation of Colonial's obligation under the ICA to offer service to all upon reasonable request.¹²

II. Procedural Issues

5. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2016), prohibits answers to requests for rehearing. Accordingly, we reject Sunoco's answer to the requests for rehearing.

6. R. Gordon Gooch filed a Request for Rehearing and a separate Petition for Rulemaking¹³ in this docket. On January 10, 2017, Mr. Gooch withdrew his request for rehearing.¹⁴ We dismiss Mr. Gooch's Petition for Rulemaking. The issues raised by Mr. Gooch, which chiefly involve how to address circumstances in which an oil pipeline's revenues exceed its cost-of-service, are beyond the scope of this proceeding, which is limited to Colonial's specifically proposed tariff revisions. Moreover, in the time since Mr. Gooch has filed his Petition for Rulemaking, the Commission has commenced a rulemaking proceeding in Docket No. RM17-1-000, which includes, among other things, proposed revisions that would deny oil pipeline index increases in certain instances where revenues exceed the pipeline's cost-of-service.¹⁵ We therefore find that Mr. Gooch's Petition for Rulemaking, even if not dismissed, would be moot.

III. Discussion

A. Rehearing Requests

7. On rehearing, Colonial explains that it did not intend for its earlier portfolio of tariff revisions to be considered as a singular, all-or-nothing package.¹⁶ Colonial and other parties request the Commission to reconsider whether certain parts of Colonial's

¹² *See id.* P 26.

¹³ R. Gordon Gooch Request for Rulemaking, Docket No. IS16-61-001 (filed on August 1, 2016).

¹⁴ R. Gordon Gooch Withdrawal of Rehearing Request, Docket No. IS16-61-001 (filed on January 10, 2017).

¹⁵ *Revisions to Indexing Policies and Page 700 of FERC Form No. 6*, 157 FERC ¶ 61,047 (2016).

¹⁶ Colonial Rehearing Request at 2-3.

initial, multifaceted tariff filing may be approved.¹⁷ Generally, the parties contend that the July 2016 Order should have approved two aspects of Colonial's November 2015 proposed tariff revisions (1) a revision to Item 20(b) which would reduce a Regular Shipper's Minimum Tender on the Woodbury-Linden Main Line from 25,000 barrels to 15,000 barrels;¹⁸ and (2) a revision to Item 31(b) (definition of Calculated Cycle Historical Allocation) which would reduce the rounding multiple for allocating capacity on Main Lines 1 & 2 from the nearest 25,000 barrels to the nearest 5,000 barrels.¹⁹ We have reviewed Colonial's justification for each of these proposals as discussed below, and have determined to grant rehearing with respect to these two proposals.

B. Colonial's Initial Proposal and Responses

8. In its initial filing in this proceeding, Colonial explained that its proposal to reduce the rounding multiple for allocating capacity on Main Lines 1 & 2 from the nearest 25,000 barrels to the nearest 5,000 barrels was necessary because the current rounding increment of 25,000 barrels creates a substantial disparity between Regular Shippers' history and their allocations during prorationing.²⁰ Colonial stated that its proposal to reduce the rounding multiple for allocating capacity will reduce the gap between Regular Shippers' history and their allocations during prorationing, which will enhance the fairness of its system overall and better match the intent of the prorationing process.²¹

9. Colonial also explained that the proposed rounding increment reduction is needed because under the current rounding and history transfer process, two Regular Shippers can trade history to create an outcome in which both the transferor and transferee are rounded upwards to receive a higher allocation in a given month.²² Colonial contended its proposed rounding increment reduction addresses this issue by reducing the incentive

¹⁷ *Id.*

¹⁸ *Id.* at 3-4; American Airlines Rehearing Request at 4-5.

¹⁹ Marathon Rehearing Request at 3-6; Murphy and TransMontaigne Rehearing Request at 4-7; American Airlines Rehearing Request at 4-5; Colonial Rehearing Request at 4-5.

²⁰ July 2016 Order, 156 FERC ¶ 61,001 at P 9; Colonial Initial Tariff Filing at 6.

²¹ Colonial Response to Protests, Docket No. IS16-61-000, (filed on November 23, 2015) at 23 (Colonial November 23 Response to Protests).

²² *Id.*

for Regular Shippers to trade history in the secondary market, because the rounding gains to be realized will be significantly reduced.²³

10. Finally, Colonial explained that the current rounding process and minimum tender requirement disproportionately affects large volume Regular Shippers and favors smaller volume Regular Shippers (those receiving an allocation of 50,000 barrels or less).²⁴ Colonial argued that its proposed revision will produce a more consistent impact across shippers of all volume classes.²⁵ Specifically, Colonial stated that by reducing its rounding increment to 5,000 barrels, all small and large volume Regular Shippers will experience a similar percentage variance between their allocation and ticketed history. Colonial contended that this tariff change will result in a more impartial and evenhanded policy for all Regular Shippers.

11. Several shippers initially raised concerns regarding the proposed rounding increment reduction. As summarized in the Order Accepting and Suspending Tariffs,²⁶ the shippers' concerns primarily arose from the fact that the industry standard for batch sizes is 25,000 barrels, and that small volume Regular Shippers may be prejudiced by having to source odd lot-sized transportation batches, most likely at a premium cost, as compared with larger volume Regular Shippers.²⁷ Others raised concerns of the erosion of shipper history,²⁸ and questioned their ability to ship certain grades of commodities.²⁹

²³ *Id.* at 23.

²⁴ Colonial Initial Tariff Filing at 6.

²⁵ Colonial November 23 Response to Protests at 23.

²⁶ *Colonial*, 153 FERC ¶ 61,270 at PP 18-26.

²⁷ See NIC Holding Corp., Motion to Intervene and Protest, Docket No. IS16-61-000, at 18 (filed on November 18, 2015); Joint Protest of Castleton Commodities and Merchant Trading L.P. and RoyImpus (US) Commodities Group, LLC, Docket No. IS16-61-000, at 6-8 (filed on November 18, 2015) (Castleton Protest).

²⁸ Trafigura Motion to Intervene and Protest, Docket No. IS16-61-000, at 13-17 (filed on November 18, 2015) (Trafigura Protest); NIC Holding Corp. Motion to Intervene and Protest, Docket No. IS16-61-000, at 18 (filed on November 18, 2015).

²⁹ Castleton Protest at 7.

Trafigura requested that Colonial justify why a reduction of the rounding increment, specifically to 5,000 barrels, is necessary.³⁰

12. In response to these concerns, Colonial explained that Plantation Pipeline, a parallel pipeline sourcing from the Gulf Coast, already has a minimum tender rule of 15,000 barrels, and that other major pipelines have minimum tenders even lower than 15,000 barrels.³¹ Colonial asserted that if two pipelines sourcing from the Gulf Coast require 15,000 minimum tender batches, it is likely that 15,000 barrels will be readily available. Colonial further asserted that the supply market is competitive and flexible and can be expected to adapt to new requirements.³² Colonial argued that it is treating all its shippers the same, and how such shippers source barrels is beyond the jurisdiction of both Colonial and the Commission. Colonial contended that it has met the burden of ICA section 3(1) because the proposed policies will apply equally to all shippers.³³

13. Colonial stated that all shippers receive equal treatment when the pipeline is operating below 100 percent allocation, because each shipper's allocation is reduced in proportion to that of all other shippers, preserving each shipper's history.³⁴

14. Colonial further argued that since shippers with nominated volumes below the 25,000 barrel increment will be rounded up, advantaging small volume shippers, the change in minimum tender is necessary to bring a nondiscriminatory outcome for larger shippers.³⁵

C. July 2016 Order

15. In the July 2016 Order, the Commission determined that certain of Colonial's tariff revisions are facially inconsistent with the common carrier obligations under the ICA, are unjust and unreasonable, and create undue preferences or advantages for larger Regular Shippers.³⁶ Specifically, the Commission found that the combined effect of the

³⁰ Trafigura Protest at 7-13.

³¹ Colonial November 23 Response to Protests at 26.

³² *Id.* at 26.

³³ *Id.* at 27.

³⁴ *Id.* at 30.

³⁵ *Id.* at 28.

³⁶ July 2016 Order, 156 FERC ¶ 61,001 at P 27.

lottery and shipper history provisions would eliminate the only means through which a New Shipper can access the Colonial system.³⁷ Thus, the Commission found because certain provisions of Colonial's proposed multifaceted tariff were unjust and unreasonable, the entire tariff proposal was unjust and unreasonable.

D. Rehearing Requests

16. On rehearing, Murphy and TransMontaigne assert that the Commission erred by rejecting Colonial's proposal to reduce the rounding increment to 5,000 barrels, a proposal that Murphy and TransMontaigne assert would be fair to all shippers and improve the overall integrity of Colonial's allocation program.³⁸ Specifically, Murphy and TransMontaigne argue that (1) a higher rounding increment results in the creation of additional shipper history, which encourages shippers to inflate and trade shipper history to obtain a higher allocation capacity; (2) a higher rounding increment results in large shippers bearing a greater portion of capacity reductions, since larger shippers are more affected by a large rounding increment; and (3) a smaller rounding increment would allow Colonial to more evenly distribute the impact of reduced capacity across all shippers.³⁹ Marathon contends that if Colonial reduced its rounding increment, it would treat all shippers alike and the revision would eliminate the unfairness of the current situation where some shippers received higher allocations than appropriate based on their history while others received less.⁴⁰ Finally, Colonial notes that Trafigura Trading LLC, a shipper that initially protested the proposed reduction of the rounding increment for allocating pipeline capacity, expressly declined to submit adverse comments against the proposal in its post-technical conference comments.⁴¹

17. Regarding the minimum tender provision, American Airlines contends that the July 2016 Order did not articulate why Colonial's minimum tender rule is not just and reasonable.⁴² American Airlines states there is record evidence supporting the legality of Colonial's proposals, and the proposals themselves have strong support among various

³⁷ *Id.* P 21.

³⁸ Murphy and TransMontaigne Rehearing Request at 5.

³⁹ *Id.* at 5.

⁴⁰ Marathon Rehearing Request at 4.

⁴¹ Colonial Rehearing Request at 4.

⁴² American Airlines Rehearing Request at 4-5.

stakeholders.⁴³ Murphy and TransMontaigne contend that the July 16 Order erred by reviewing the tariff modifications as an all or nothing approach, and states that nothing precludes the Commission from accepting some modifications and rejecting others.⁴⁴ Colonial contends that three shippers (Marathon, Murphy, and TransMontaigne) expressly support the minimum tender provision, and that the three shippers that did address the minimum tender rule in their original protests (Trafigura Trading LLC, Castleton, and the New Shipper Group) refrained from additional comment on this issue in their post-technical conference submissions.⁴⁵ Colonial further notes that no parties currently appear to dispute this tariff provision.⁴⁶

E. Commission Determination

18. The July 2016 Order's determination was based on an assessment of Colonial's submission as a comprehensive package.⁴⁷ That Colonial sought such a holistic review was further indicated by the pipeline's refusal to modify its tariff revisions to simply a reduction of the rounding increment.⁴⁸ Consequently, the Commission's finding that certain provisions of Colonial's proposed tariff were unjust and unreasonable (such as the lottery system and restrictions on history transfer) resulted in a finding that the entire multifaceted tariff proposal was not just and reasonable.

19. On rehearing, Colonial's clarification that it did not intend to propose an all-or-nothing package compels us to reconsider our finding. No parties currently express opposition to the proposed minimum tender and rounding increment revisions in this

⁴³ *Id.*

⁴⁴ Murphy and TransMontaigne Rehearing Request at 6-9.

⁴⁵ Colonial Rehearing Request at 3 (citing Joint Initial Post-Technical Conference comments of Trafigura and Valero) (filed on April 8, 2016) ("While Colonial's proposal to change the rounding increment used to determine Regular Shipper allocations on the carrier's Mainlines was a central focus of Trafigura's protest and of serious concern to Valero, Commenters are not pursuing this issue in the instant comments. Rather, [Trafigura and Valero] are continuing to engage Colonial on an informal basis regarding this issue in order to assure themselves of the claimed beneficial nature of this change.").

⁴⁶ *Id.* at 3-4.

⁴⁷ July 2016 Order, 156 FERC ¶ 61,001 at P 15 n.5 (citing Colonial Revised Tariff Proposal).

⁴⁸ *Id.* P 25.

proceeding and the rehearing requests indicate widespread support for the adoption of these specific tariff provisions. Indeed, in the July 2016 Order, the Commission even found many concerns would have been addressed had Colonial simply proposed a reduction of the rounding increment from 25,000 barrels to 5,000 barrels.⁴⁹

20. As described above, the minimum tender and the reduction of the rounding increment would produce a similar rounding impact across Regular Shippers of all volume classes. Moreover, the reduction of the rounding increment would reduce the gap between ticketed shipper history and capacity allocation and disincentivize trading history to realize greater rounding gains. Thus, in light of Colonial's clarification, the Commission has reviewed Colonial's proposed tariff revisions to Items 20(b) and 31(b) (Definition of Calculated Cycle Historical Allocation), and finds that the proposed revisions are adequately supported and are just, reasonable, and not unduly discriminatory.⁵⁰ Colonial may refile tariff provisions consistent with the findings in this order.

The Commission orders:

(A) Sunoco's Answer to Requests for Rehearing is rejected, as discussed in the body of this order.

(B) Mr. Gooch's Petition for Rulemaking is dismissed, as discussed in the body of this order.

(C) The Requests for Rehearing of American Airlines, Colonial, Marathon, and Murphy and TransMontaigne, are granted, as discussed in the body of this order.

⁴⁹ *Id.*

⁵⁰ This determination is without prejudice to any further finding in Docket No. OR16-17, which involves an investigation into Colonial Pipeline's allocation of capacity on its system. *Tricon Energy Ltd. and Rockbriar Partners Inc v. Colonial Pipeline Co.*, 156 FERC ¶ 61,176, at P 26 (2016).

(D) Colonial may submit a revised tariff, consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.