ORDER FOLLOWING TECHNICAL CONFERENCE

(issued February 23, 2018)

1. This order following technical conference addresses Colonial Pipeline Company’s (Colonial) June 23, 2017 tariff filing proposing modifications to product specifications for its Greensboro, North Carolina local delivery lines to permit the blending of up to five percent biodiesel into Ultra Low Sulfur Diesel (ULSD). For the reasons discussed below, the Commission finds Colonial’s tariff changes to be just and reasonable, and not unduly discriminatory or preferential, and will permit the tariffs to become effective on February 24, 2018, after the end of the seven-month suspension period.

Background

2. On June 23, 2017, Colonial proposed several modifications to its distillate product specifications in order to support the blending of biodiesel with ULSD on three discrete Colonial line segments in North Carolina: (1) the Greensboro Local Delivery Lines; (2) Line 22 to Selma, North Carolina; and (3) Line 24 to Fayetteville, North Carolina (Greensboro Line Segments). The proposed tariff amends the reference to product specifications located in Item 10(b) within Colonial’s Rules and Regulations Tariff by revising various distillate product specifications to account for the injection of up to five percent biodiesel into ULSD on the Greensboro Line Segments. As a result of the revised product specifications, Colonial also proposed various additional clarifying and conforming changes. Colonial stated that the purpose of the product specification changes was to support its shippers in meeting the fuel-blending benchmarks under the Environmental Protection Agency’s (EPA) Renewable Fuel Standards program, of which biodiesel is a key component.

3. The blending of biodiesel with ULSD is done by Texon Distributing L.P. d/b/a Texon L.P. (Texon). Colonial is not affiliated with Texon. Texon and the shipper decide when to blend and inform Colonial of the cycle in which blending will occur. Colonial
granted Texon access to Colonial’s Greensboro, North Carolina tank farm to inject biodiesel into the ULSD stream on the Greensboro Line Segments.

4. Phillips 66 Company filed comments in support of Colonial’s filing. Murphy Oil USA, Inc. (Murphy) and G.P. & W., Inc. d/b/a Center Oil Company (Center Oil) filed protests to Colonial’s filing. On July 20, 2017, pursuant to the authority delegated by the Commission’s February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum, Colonial’s proposed tariff was accepted for filing and suspended for seven months, to become effective February 24, 2018, subject to refund and further Commission order.

5. On September 7, 2017, the Commission issued an order finding that the issues raised by the filing required additional exploration and scrutiny that could best be accomplished at a technical conference. On October 25, 2017, a technical conference was convened. Based upon the agreement of the Commission Staff and the attendees at the technical conference, initial comments were due by November 15, 2017, and reply comments were due by December 6, 2017. Both initial and reply comments were filed by Colonial and Murphy.

**Colonial Initial Comments**

6. Colonial states that it has demonstrated with substantial evidence that its tariff satisfies the common carrier obligation to maintain just, reasonable, and nondiscriminatory rates and practices, that the change is consistent with the Interstate Commerce Act (ICA) and Commission precedent, and that it is well within the zone of reasonableness.

7. Colonial states that to track compliance with the Renewable Fuel Standards, when renewable fuels are produced, a Renewable Identification Number (also known as a “RIN”) is created for each gallon as it is transferred from a renewable fuel producer to a fuel blender. Colonial states that an obligated party can satisfy its Renewable Fuel Standards obligation either by creating RINs through blending or by purchasing them in

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3 *Colonial Pipeline Co.*, 160 FERC ¶ 61,051 (2017).

the market. Colonial states that by allowing the blending of biodiesel into ULSD, the specification change significantly lowers a shipper’s hurdles to creating RINs by providing access to reliable, large-scale blending capability without impacting the ability of the delivered ULSD to meet the requirements and needs of the end user.

8. Colonial states that ASTM, one of the world’s largest international standards developing organizations, creates “fit for purpose” standards. Colonial states that ASTM D975-17 Standard Specification for Diesel Fuel Oils is the standard routinely adopted by state governments to define the qualities associated with ULSD. Colonial states that ASTM D975 allows up to five percent biodiesel in the fuel. Colonial states that federal and state requirements do not require ULSD containing up to five percent biodiesel be specially labeled because such fuel meets the same “fit for purpose” standard as unblended ULSD. Nonetheless, to address Murphy’s concerns regarding compliance with North Carolina’s unique labeling laws, Colonial committed to provide shippers with a ticket showing the exact concentration of biodiesel in the ULSD delivered on the Greensboro Line Segments.

9. Colonial states that its tariff specification change does not reduce the volume of product delivered to any shipper, and that blending may, in fact, increase the value of the delivered product. Colonial states that a shipper that does not contract with Texon will be delivered the same volume of product that it tendered into Colonial’s system.

10. In the event a line segment is in proration, Colonial states that nothing about the blending of biodiesel will alter the method by which Colonial calculates each shipper’s individual allocation under Item 31 of the Rules and Regulations Tariff. Colonial states that each shipper will be able to move ULSD only to the extent of its shipping history, regardless of whether or not it has contracted with Texon for blending services.

11. Colonial asserts that the ICA vests in common carriers like Colonial the discretion to implement tariff changes as long as such changes comply with the carrier’s obligation to maintain just and reasonable rates and practices and do not unduly discriminate among similarly situated shippers. Colonial submits that the Commission also has long held

5 The RINs thus created by blending biodiesel add value to the ULSD product under the EPA regulations implementing the renewable fuels program under the Clean Air Act, at 40 C.F.R. pt. 80. RINs are essentially the credits used for compliance with that program in the following cycle: (1) Renewable fuel producers generate RINs; (2) Market participants trade RINs; (3) Obligated parties obtain and then ultimately retire RINs for compliance.

that the ICA permits a common carrier to define the service it offers. Colonial contends that it is offering all shippers the opportunity to move ULSD with up to five percent biodiesel on its Greensboro Line Segments. Colonial argues that nothing about that opportunity constitutes undue discrimination or in any other way violates Colonial’s common carrier responsibilities.

12. Colonial states that Section 3 of its Shipper Manual, which is specifically incorporated by reference in Item 10(b) of Colonial’s Rules and Regulations Tariff, identifies what products may be transported and where those products may be tendered and delivered. As it pertains to this proceeding, Colonial states that there are two relevant products that may be tendered, Grade 62 ULSD and Grade 49 B100, which is a pure biodiesel. Colonial states that Grade 62 ULSD may not contain any biodiesel at origin (due to concerns with fatty acid ester trail back, which can negatively affect jet fuel), but it may contain up to five percent biodiesel when delivered off of Lines 17 or the Greensboro Line Segments. Colonial states that its specification for Grade 49 B100 expressly states that B100 “is not available for shipping” but instead is “intended for blending purposes only.” Colonial states that because the Grade 62 ULSD specification allows up to five percent biodiesel, Grade 49 B100 may be injected into Grade 62 ULSD so long as the resulting blend stays within the five percent limit. Furthermore, because Grade 49 B100 cannot be moved as a separate product, Colonial states that the blending injection point is not an origin point. Instead, Colonial states that the additional Grade 62 ULSD that is created by blending is charged a Houston basis transportation rate. Colonial asserts that those carefully interwoven specifications are fair to all shippers, and fall well within the zone of reasonableness and the discretion afforded Colonial to define the service it chooses to offer.

13. Colonial states that Item 30 of its Rules and Regulations Tariff makes clear that it is inherent in the operation of a fungible pipeline that petroleum products mix while in transit, and that Colonial “is under no obligation to deliver the identical petroleum products received.” Colonial states that due to the inherent nature of a fungible batch, blending will impact the entire batch, but that does not mean it is using a particular shipper’s product. Colonial asserts that because the Grade 62 ULSD is fungible, the shipper is not entitled to receive any particular molecule with a specific characteristic; instead, the shipper is guaranteed to receive at delivery the same grade of product it tendered.

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14. Colonial submits that the specification change does not result in a decrease in the volume or value of the ULSD transported for Murphy or any other shipper. Colonial contends that at the technical conference, Murphy did not challenge Colonial’s assertion that the blended ULSD remains fit for purpose.

15. Colonial states that Murphy objects to the specification change because the change may complicate Murphy’s ability to capture greater profits by blending up to 20 percent biodiesel, and because Murphy wants to avoid the costs to ensure compliance with North Carolina’s labeling requirements. Colonial states that Murphy did not deny that it is capable of testing the delivered product; rather, it maintained that testing is expensive and time consuming.

16. Colonial asserts that the ICA is designed to promote competition among shippers, not to protect or advance the economic interest of any single shipper. Colonial asserts that the Commission has declined to exert jurisdiction simply because the petitioning party’s business interests would benefit from Commission intervention.

17. Colonial asserts that Murphy’s underlying problem is compliance with North Carolina’s labeling requirements. Colonial states that North Carolina does not require special labeling of Grade 2-D (ULSD with up to five percent biodiesel), which meets the ATSM D975 standard. North Carolina does, however, require ULSD containing more than five percent biodiesel to be labeled with the exact concentration of biodiesel (“registered brand name”), and those labels must be accurate within certain tolerance limits. Colonial states that Murphy has explained that it has historically “splash blended” up to 20 percent biodiesel into the ULSD stream and has labeled its product

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8 See Buckeye Pipe Line Co., 13 FERC ¶ 61,267, at 61,595 (1980) (observing that the ICA’s oil pipeline provisions “are primarily designed to promote equity among entrepreneurs”).

9 See Western Ref. Pipeline Co., 123 FERC ¶ 61,271, at 62,658 (2008) (Western Refining) (declining to extend jurisdiction where protestors had merely demonstrated “that they are likely to receive a lower price for their crude oil due to increased competition”).

10 Splash-blending is a form of sequential blending where the diesel product and the biodiesel product are added at different locations. Murphy’s August 9, 2017 Reply at 4, n.11. See also definition of splash blending cited at Murphy’s November 15, 2017 Initial comments at 6. Biodiesel and diesel fuel are loaded into a vessel separately. Mixing of the products occurs as the fuel is agitated through the blending of each fuel and during the transportation and delivery of the fuel to the end user. West Coast
accordingly. Colonial argues that its specification change does not affect either Murphy’s labeling obligations or its decision as to how and when to blend. Colonial states that the obligation to comply with any state or federal posting or labeling requirements is solely the responsibility of the party blending the alternative liquid fuels above five percent biodiesel.

18. Colonial asserts that the ultimate issue here is that Murphy opposes the specification change because it may reduce Murphy’s own opportunity to blend, a concern that has led only two of Colonial’s many and varied shippers to protest the tariff. Colonial asserts that in cases where no single proposal can satisfy everyone, the Commission has accepted tariff proposals advanced by pipelines that represent a reasonable accommodation of the competing interests of shippers. Colonial submits that the Commission has stated that its “role is merely to examine a proposal, consider the positions of affected parties, and determine whether the pipeline’s proposal is a reasonable one that does not cause undue discrimination.” Colonial contends that the tariff change plainly meets this standard.

19. Colonial states that it is not offering to ship both a “classic clear” and blended ULSD on its Greensboro Line Segments because it would negatively affect total throughput. Colonial contends that a common carrier is allowed to define the service it offers. Colonial is not offering to ship both “classic clear” and blended ULSD on its Greensboro Line Segments, but instead is offering to ship a single grade of ULSD that may contain up to five percent biodiesel. Colonial asserts that the Commission has ruled that there is no legal basis for the Commission to direct the provision of service solely based on an individual shipper’s economic need, because ultimately it is the oil pipeline’s

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12 Enbridge Pipelines (North Dakota) LLC, 122 FERC ¶ 61,196 at P 14; see also Enbridge Energy, Ltd. P’Ship, 144 FERC ¶ 61,035, at P 27 (2013) (“If the rates, terms, and conditions proposed by the pipeline are just and reasonable, the Commission must accept them, regardless of whether other rates, terms, and conditions may also be just and reasonable.”).

13 Use of “classic clear” means pure ULSD without any percentage of biodiesel blended into it.
choice as to what services it will offer. Colonial submits that its specification change is both reasonable and consistent with that precedent.

**Murphy Initial Comments**

20. Murphy states that Colonial’s tariff change indicates a third-party, Texon, would be providing blending services to certain shippers receiving deliveries along the Greensboro Line Segments - namely those that have entered into agreements with Texon. As a result, Colonial claims that its agreement with Texon is non-jurisdictional. Murphy argues that Colonial will allow Texon to inject 100 percent biodiesel at the Greensboro Junction, and that to the extent that any blending will occur, it will only take place once the biodiesel enters the pipeline, in the form of in-line blending. Murphy asserts that the tariff revisions permit Texon to nominate a non-blended, pure biodiesel product while Colonial is only transporting a clear ULSD product, and the blending occurs as the two products move through the pipeline. Murphy asserts that while the current arrangement requires Texon to supply the biodiesel, the actual blending service will be performed by Colonial, as the biodiesel commingles with diesel product during transportation along Colonial’s jurisdictional facilities.

21. Murphy states that in determining when a pipeline must file the rates and regulations governing a service such as blending, the Commission precedent holds that when services “relate to product that is already in the [pipeline’s] system, it becomes a question of when the transportation ends.” In *Kerr-McGee*, the Commission found that product transfer services provided by the pipeline were jurisdictional, stating that the “transportation provided by the pipeline does not end until the product is delivered in accordance with the directions given to [the pipeline] via” the product transfer orders. Murphy states that the Commission found that the service fell within the scope of section 6(1) of the ICA, even though it was not necessary for transportation, because the service “increased the value of the basic transportation service to the shipper.”

22. Murphy asserts that when the mechanics of the arrangement are closely examined, it is clear that the blending occurs not only directly on the pipeline, but also well before transportation of the product ends. Murphy asserts that Texon, acting as a shipper, will nominate 100 percent biodiesel, known as Grade 49, by means of direct injection into

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16 *Id.*
Colonial’s jurisdictional facilities at the Greensboro Junction. In addition, Murphy states that despite nominating Grade 49, Colonial will permit Texon to take delivery of an equivalent volume of blended ULSD (Grade 62). Murphy submits that up until the moment that Texon makes such an injection, Colonial will only be transporting clear ULSD. Murphy states that following no other action by Texon after its direct injection of Grade 49, Colonial will transport, and subsequently deliver, blended ULSD (the modified Grade 62) to downstream points.

23. Murphy asserts that in addition to increasing the value of Colonial’s transportation service via its relationship with Texon, which charges shippers contracting with Texon for its blending service, a closer examination of Colonial’s presentation reveals the active role that Colonial has in determining the composition of the blended product. Murphy states that when shippers desire to nominate products that are legitimate fungible batches with other shipments being transported, the amount of barrels that Colonial may accept from those shippers is the pipeline’s total capacity, minus its current transportation volume. Murphy states that Colonial must determine the limit on the number of barrels of Grade 49 that Texon may inject, by taking the total number of barrels nominated for delivery on the Greensboro Line Segments and dividing by 20 (or multiplying by five percent). Murphy states that Colonial would perform this calculus to ensure that the blended ULSD product that it later delivers to shippers on the Greensboro Line Segments does not exceed the bounds of the modified product specification for Grade 62 (zero to five percent biodiesel).

24. Murphy asserts that despite the operational and administrative roles that Colonial plays in providing the proposed blending service, it has chosen to treat the activity as non-jurisdictional under the ICA and Commission regulations, and not file the terms of its arrangement with Texon, or file tariff revisions with explicit rules governing the Texon blending service so as to allow the Commission to make a just and reasonable determination. Murphy asserts that the proposed blending service would increase the value of the transportation service provided to Texon, as Texon alone will be able to inject Grade 49 biofuel into the pipeline and charge its customers receiving deliveries along the Greensboro Line Segments for blending service. Murphy contends that the blending service is neither separate from the transportation of the products, nor does it occur after transportation ends.

25. Murphy asserts that Colonial has also failed to meet its burden of showing that the tariff revisions are fair and not unduly discriminatory. Murphy states that when modifying their tariffs, pipelines cannot improperly discriminate among shippers. To be more precise, section 3 of the ICA states that “it shall be unlawful for any common carrier … to make, give, or cause any undue or unreasonable advantage to any particular person [or] company … or to subject any particular person [or] company … to any undue
or unreasonable prejudice or disadvantage in any respect whatsoever.”

26. Murphy contends that the tariff revisions provide an advantage to Texon and its customers, at the expense of other shippers.

27. Murphy asserts that customers of Texon that desire blended ULSD would receive it when Colonial delivers the modified Grade 62, after Texon injects pure biodiesel Grade 49 only at the Greensboro Junction. Murphy asserts that this is made possible by Colonial’s forcing shippers that are not customers of Texon to donate a portion of their clear ULSD to support the Colonial-Texon arrangement. Murphy states that Colonial’s representatives offered the explanation that the Grade 49 biodiesel that Texon nominates will somehow transform to Grade 62 at the instant that Texon injects it. Murphy considers this claim irrational, and argues that the legal plausibility that Colonial will only be transporting new specification Grade 62 depends on the assumption that Colonial instantaneously exchanges at least 95 percent of the product that Texon injects with clear ULSD tendered by other shippers like Murphy.

28. Murphy argues that Colonial’s offer to disclose the biodiesel content of the new Grade 62 ULSD is not a workable compromise for shippers like Murphy, who do not wish to contract with Texon. Murphy asserts that the disclosure of biodiesel content offered by Colonial does nothing to alleviate these shippers’ burden of testing the products they receive from Colonial for biodiesel content. Murphy explains that this is so because daily shipments are not segregated at the terminals where Colonial delivers Grade 62; rather, they are commingled in receiving tanks that may include a portion of the deliveries for any given day of the month, all with varying percentages of biofuel.

29. Colonial asserts that the ICA does not vest in the Commission jurisdiction over biodiesel blending. Colonial states that biodiesel blending is done every day by non-

pipeline companies, and it has never been deemed jurisdictional by the industry or the Commission. Colonial submits that the mere fact that Texon’s blending facilities are connected to Colonial’s pipeline system does not change the jurisdictional status of the service.

30. Colonial states that Murphy incorrectly relies on Kerr-McGee and the two cases it cites for the proposition that the Commission’s jurisdictional test is whether the transportation service ends before the alleged jurisdictional service occurs. Colonial states that Murphy fails to disclose that on rehearing in Kerr-McGee, the Commission reversed its jurisdictional ruling because it determined that some of the services that “occur[ed] in transit on the pipeline,” were “neither incidental nor necessary” for the pipeline to perform its “jurisdictional transportation service.” Colonial explains that the Commission thereby refined and clarified the jurisdictional transportation test as not merely a question of whether the alleged service occurs before the transportation service ends, but also whether the service is “integral” or “necessary” for the pipeline to perform its jurisdictional transportation service. Colonial states that the blending service here is neither integral nor necessary to Colonial’s transportation service.

31. Colonial states that in 2011, Colonial added Grade 49 biodiesel blend-stock to its product list, and revised its product specifications to allow for non-jurisdictional blending of biodiesel into ULSD (up to five percent). In a series of filings since that time, Colonial states that it has clarified its product specifications and the transportation rates associated with non-jurisdictional blending. In the instant docket, due to additional

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18 See TE Products Pipeline Co., LLC, 131 FERC ¶ 61,277, at P 12 (2010) (“[T]he fact that [the services in question] are provided by non-jurisdictional entities supports the conclusion that they are not integral or necessary for jurisdictional transportation.”) (TE Products).

19 Kerr-McGee, 72 FERC ¶ 61,274 at 62,199.

20 See Docket No. IS12-28-000 (Nov. 8, 2011) (reflecting the addition of Grade 49 and revising the product specifications to accommodate transportation of biodiesel-blended volumes on Line 17).

21 See, e.g., Docket No. IS13-151-000 (Feb. 4, 2013) (revising product specifications related to Line 17 among other changes); Docket No. IS13-165-000 (Feb. 20, 2013) (updating rate tariff for transportation of blended volumes). These filings were not protested. In Docket No. IS16-275-000, the Commission approved the rate tariff provision relating to the transportation charge associated with surplus and swell volumes, over the protest of one shipper on an issue not relevant here. See Colonial Pipeline Co., 155 FERC ¶ 61,214 (2016).
demand for biofuels, Colonial further revised its product specifications to accommodate a new non-jurisdictional blending service offered by Texon.

32. Colonial states that shippers (i.e., those contracting with Texon) will own both the extra barrels (swell) that result from Texon’s injection of biodiesel into the ULSD, and the RINs associated with each blended gallon created. Colonial states that Texon, like other shippers, will have the right to ship its own volumes of blended ULSD, and it must nominate and tender those barrels in accordance with Colonial’s current Rules and Regulations Tariff, subject to the rates, terms and conditions already on file with the Commission. Colonial states that it will charge its published tariff rate for transporting the original (non-blended) ULSD barrels based on their point of origin, but for any swell ULSD barrels nominated by shippers subscribing with Texon, including Texon itself, Colonial will charge a Houston-based tariff rate. Colonial states that ULSD shippers that elect not to subscribe to Texon’s blended ULSD service volumes will pay only the published transportation rate for volumes moved from the actual points of origin of the ULSD barrels they tender to Colonial, precisely as would be the case in the absence of Texon’s blending.

33. Colonial states that the ICA vests in the Commission jurisdiction over common carriers engaged in the “transportation of oil . . . by pipe line.” ICA § 1(1)(b). Colonial states that Texon does not own or lease a pipeline over which it could provide transportation service, and therefore it is not itself a common carrier over which the Commission has jurisdiction. Nevertheless, even applying the Commission’s test for evaluating whether a common carrier’s service is jurisdictional, Colonial asserts that Texon’s services fall outside ICA jurisdiction because they are not “integral” or “necessary” to jurisdictional transportation service.

34. Colonial submits that like Texon and other industry participants, Murphy itself is a blender. Colonial states that biodiesel blending is done every day by pipeline and non-pipeline entities alike, including by Texon and Murphy. Colonial asserts that neither Texon nor Murphy – nor, for that matter, any other entity of which Colonial is aware – has published a FERC tariff for its blending activity. Colonial contends that the industry practice is not to treat blending as a jurisdictional activity, and properly so.

35. Colonial states that Murphy contends that it is actually Colonial that is providing the blending service. Murphy therefore argues that Colonial must “file the terms of its arrangement with Texon,” or “file tariff revisions with explicit rules governing the

\[22\] See Colonial’s Tariff, FERC 99.23.0, Item 900, footnote (7) (“All Surplus or product, which is generated on the system downstream of Collins, Mississippi, delivered to a Shipper shall be charged a Houston basis transportation charge…”).
service that would allow the Commission to make a just and reasonable determination.” Colonial asserts that the basic premise of Murphy’s contention is incorrect: Colonial is in fact not providing the blending service. However, even if it were providing that service, the mere fact that Colonial is a common carrier is not sufficient to make biodiesel blending a jurisdictional service.\(^{23}\)

36. Colonial states that in *Lakehead Pipe Line Co., Ltd. P’ship*, the Commission found that certain breakout tankage connecting Lakehead’s upstream and downstream transportation services fell under its jurisdiction because it was “the functional equivalent of missing pipe” and, therefore, “part and parcel,” “necessary,” and “an integral part of the overall transmission function.”\(^ {24}\) Colonial submits that, in contrast, the Commission in *TE Products* did not find “integral” or “necessary” certain terminal and odorization services the pipeline sought to remove from its tariff and spin off to an unregulated affiliate.\(^ {25}\) Colonial asserts that the Commission found those services were “unlike the services described in *Lakehead,*” and instead were provided “as a convenience” to shippers.\(^ {26}\) Thus, the Commission held it lacked jurisdiction either to compel TE Products to maintain these services in its tariff or to preclude the pipeline company from transferring the services to a non-jurisdictional entity.

37. Colonial asserts that as relevant here, and consistent with *Lakehead* and *TE Products*, Texon’s facilities and services are not necessary or integral to any transportation service provided by Colonial. Texon injects biodiesel into ULSD at Greensboro, but it does not engage in any transportation. Colonial contends that in much the same way shippers use third-party, non-jurisdictional storage facilities, Colonial’s

\(^{23}\) Although it is possible that some pipelines may provide non-jurisdictional blending as a convenience to their shippers, “[t]he fact that other oil pipelines may offer… [such] services does not compel [another pipeline] to offer such services.” *Western Refining*, 123 FERC ¶ 61,271 at P 12.

\(^{24}\) 71 FERC ¶ 61,338, at 62,325 (1995), on reh’g, 75 FERC ¶ 61,181, at 61,601 (1996) (*Lakehead*). *See also* *Wolverine Pipe Line Co.*, 92 FERC ¶ 61,277 (2000) (*Wolverine*) (finding that (1) “Wolverine appears to be very similar to *Lakehead.*” The services were “integral” or “necessary” to the transportation function of the pipeline where certain tankage facilities served as a link between the pipeline company’s 16-inch line originating at Hammond, IN, and its 8-inch line terminating at Holland and Grand Haven, MI, and (2) the pipeline’s transportation service “is impossible to provide” without such tankage).

\(^{25}\) *See generally TE Products*, 131 FERC ¶ 61,277.

\(^{26}\) *TE Products Pipeline Co., LLC*, 130 FERC ¶ 61,257, at P 14.
shippers can subscribe to Texon’s non-jurisdictional blending and sales service, or can choose not to, as they alone see fit. Colonial states that its customers are not required to contract with Texon to obtain transportation service on Colonial’s Line 22 or Line 24, or its Greensboro local delivery line. Colonial states that Texon’s service to Colonial’s customers simply has no bearing on whether any shipper can access transportation service provided by Colonial. Colonial argues that the Texon facilities and services thus are neither integral nor necessary to Colonial’s jurisdictional transportation service and are merely provided as a convenience to Colonial’s shippers that choose to use it.

38. Colonial submits that contrary to Murphy’s contentions, Texon’s blending activities will not interfere with Colonial’s transportation or require any change to its operations that will discriminate in any way against Murphy or any other shipper. Colonial will continue to provide the same transportation service, at the same rates, to all ULSD shippers on the Greensboro Line Segments.

39. Colonial states that since it was added to Colonial’s tariff in 2011, Colonial’s Grade 49 product specification has provided that biodiesel is available only for blending and not for shipping as a distinct product. Colonial states that that provision is applied uniformly, and any shipper, including Murphy, could have sought to access Colonial’s system for blending purposes. Colonial states that Texon’s blending of Grade 49 into Colonial’s fungible Grade 62 product stream thus does not discriminate against Murphy or any other shipper, but instead is allowed by the express product specification for Grade 49. Colonial asserts that the very purpose of the instant filing is to put all shippers on notice that in the future the Grade 62 ULSD that is moving to the Greensboro Line Segments “may contain up to 5% biodiesel.” Accordingly, Colonial contends that Murphy’s allegations of undue discrimination resulting from this product specification change are baseless and should be rejected.

40. Colonial submits that it has not engaged in disparate treatment of Murphy. Colonial states that as it pertains to oil pipeline regulation, the ICA is designed to promote competition. Colonial asserts that the Commission has declined to exert

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27 See, e.g., Wolverine, 92 FERC ¶ 61,277 at 61,929-30 (citing Lakehead to find that only storage that is “integral” or “necessary” to provide transportation is jurisdictional under the ICA).

28 See Buckeye Pipe Line Co., 13 FERC ¶ 61,267 at 61,595 (observing that the ICA’s oil pipeline provisions “are primarily designed to promote equity among entrepreneurs”).
jurisdiction simply because the petitioning party’s business interests would benefit from Commission intervention.29

Colonial states that it is not forcing shippers to “donate” a portion of their clear ULSD. Colonial asserts that the notion that a shipper’s barrels tendered to Colonial are identified as the product of that specific shipper while in transit – and, therefore, may not be altered or “used” without the shipper’s consent – is incorrect. Colonial states that its Tariff makes clear that it operates a fungible system, and that it is “impractical [for Colonial] to maintain absolute identity of each total shipment of petroleum products.” As a consequence, “reasonable substitution of petroleum product having substantially the same specifications will be permitted.” Colonial asserts that with the exception of a “segregated batch” (which is not pertinent here), no Colonial shipper has a claim on any specific barrel as its product. Colonial states that its obligation is limited to delivering petroleum product having substantially the same specifications as was tendered to Colonial. Consequently, under the revised ULSD product specification, Colonial’s obligation to its shippers is satisfied so long as it delivers ULSD that meets the published standard, which may include variations of biodiesel content within the limit of the product specification, which under the proposed tariff will be up to five percent.

Colonial submits that implicit in Murphy’s argument that Colonial is “using its shippers’ product” is the notion that Murphy is entitled to a certain biodiesel blending margin in the ULSD products that Colonial transports, based on the market for ULSD at various locations. Colonial states that Murphy objects to the product specification change because the change may complicate its ability to capture greater profits by blending up to 20 percent biodiesel, and that Murphy wants to avoid the costs it may incur to ensure that the product it tenders is in compliance with state labeling requirements. Colonial contends that Murphy’s concerns regarding the location of the blending, i.e., in-line at Greensboro, in storage, or elsewhere, are irrelevant to these concerns. Colonial argues that in each case, the blender seeks to benefit from the

29 See Western Refining, 123 FERC ¶ 61,271 at P 12 (declining to extend jurisdiction where protestors had merely demonstrated “that they are likely to receive a lower price for their crude oil due to increased competition”).

30 Tariff, Item 30(b). See also Item 30(a) (“carrier is under no obligation to deliver the identical petroleum products received and may deliver petroleum products of substantially the same specifications.”) Colonial states that, in Colonial Pipeline Co., 155 FERC ¶ 61,214 at P 14, when Colonial added the footnote to clarify the treatment of “Surplus” and “Product” generated on the Colonial system, the Commission accepted the tariff filing, recognizing that swell “is generated downstream of the allocation point because it is not part of a shippers nominated/ticketed volumes at origin.” (emphasis added).
common stream biodiesel blending margin – but it does so at its own risk that the margin may change as other competitors enter the market or as other conditions change, such as the change in Grade 62 specifications being proposed here.

43. Colonial argues that while Murphy has repeatedly claimed that it will face an increased testing burden, Murphy has provided no evidence quantifying or detailing the actual hardship that will result from Colonial’s revised Grade 62 product specification. In fact, the added burden that Murphy claims is, in Colonial’s view, no different from that it faces today when it splash-blends. Colonial argues that nothing in Murphy’s filings indicates specifically what testing protocols it currently utilizes or what testing expenses it currently incurs, and certainly nothing Murphy has submitted in these proceedings establishes a basis to conclude that the change in Colonial’s Grade 62 product specification would compel Murphy to incur material additional testing burdens. Colonial submits that its revised Grade 62 product specification should not be rejected on so specious a ground.

44. Colonial contends that the ultimate issue here is that Murphy opposes the specification change because it may reduce its own opportunity to blend up to 20 percent biodiesel. Colonial states that its product specification change does not affect either Murphy’s labeling obligations or its decision as to how and when to blend. If Murphy chooses to blend to concentrations above five percent, it must figure out how to do so consistent with the relevant state’s labeling requirements. Colonial submits that the Commission should not deprive other shippers and the community at large the benefit of Texon’s blending service solely to preserve the small portion of Murphy’s biodiesel blending opportunities that may incidentally be impacted by Texon’s blending activities.

45. Colonial asserts that the Commission has long held that the ICA permits a common carrier to define the service it offers. Colonial states that in the earlier proceeding in which Colonial established its Grade 62 product specifications, the Commission ruled that “[c]learly it is not the shipper who determines what grades a pipeline will ship, and absent a statutory reason to bar it, a pipeline may determine the grades on its system.” Colonial asserts that it has met its burden of proof in this case, and there has been no showing of a statutory violation related either to rates or to undue discrimination among shippers. Colonial is now offering all shippers the opportunity to move ULSD with up to five percent biodiesel on its Greensboro Line Segments.

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32 Colonial Pipeline Co., 144 FERC ¶ 61,158, at P 17 (2013).
Colonial argues that nothing about that opportunity constitutes undue discrimination or in any other way violates Colonial’s common carrier responsibilities.

**Murphy’s Reply Comments**

46. Murphy asserts that the blending occurs after Texon delivers biodiesel to Colonial and during transportation of diesel by Colonial, and is therefore jurisdictional service under Commission precedent. Murphy contends that pursuant to Commission regulations under the ICA, Colonial is required to file and publish rules in its tariff governing a jurisdictional service such as blending, but Colonial has failed to do so. In Murphy’s view, Colonial’s attempt to equate the blending of pure biodiesel with clear diesel during transportation on its pipeline with the mixing of two fungible batches of the same product is belied by its tariff, which clearly defines fungible batches as a mixing of products with the same specifications.

47. Murphy argues that the Grade 62 specification change unduly discriminates in favor of a certain class of shippers, e.g., Texon and customers of Texon, who are granted the exclusive right to tender biodiesel to Colonial, and to receive back a blended diesel product. Murphy asserts that the proposal harms shippers by requiring them to purchase biodiesel from one supplier, under terms and conditions that are not regulated. Murphy submits that this is unfair to existing shippers because it prevents them from opting out of this in-line blending of biodiesel by Texon into their clear diesel. Murphy states that Colonial’s arguments that continuing delivery of clear diesel for its shippers would create operational concerns sidesteps another truth - that continuing delivery of clear diesel would result in less blended diesel product for Texon’s customers who only tender biodiesel to the pipeline, simply because the clear diesel from other shippers like Murphy is needed to create the blended diesel product that those shippers receive from the pipeline via Texon’s blending activities.

48. Murphy thus contends that this demonstrates that the proposal impedes the introduction of renewables into the market. Murphy states that if shippers like Murphy and Center Oil are forced to accept blended ULSD, which will already include up to five percent biodiesel, operational obstacles will prevent shippers like Murphy from further biodiesel blending above a five percent level. Murphy states that if Colonial would deliver to shippers like Murphy the pure diesel product (referred to earlier as “classic clear”) that they tender to Colonial, they would often introduce significantly more renewable fuel into the market than will be introduced under Colonial’s proposal. While Colonial argues that the Commission should not consider the economic harm to a single shipper, Colonial would, according to Murphy, have the Commission ignore the economic advantages that Colonial’s proposal grants to Texon, which receives a monopoly right to (1) inject biodiesel on behalf of shippers, (2) take any RINs created using the clear ULSD tendered by other shippers as a base for the blended product
without compensating them, (3) sell RINs to shippers at unregulated prices, and (4) exchange lower grade biodiesel for blended ULSD.

**Discussion**

49. There are two issues raised by Colonial’s filing. The first is Murphy’s assertion that Texon’s ability to inject biodiesel into the ULSD stream on the Greensboro Line Segments at the Greensboro Tank Farm is a jurisdictional transportation service. As a consequence, Murphy contends that Colonial is required to file the terms of its arrangement with Texon and tariff revisions with explicit rules governing the service that would allow the Commission to make a just and reasonable determination. The second issue is whether Colonial’s proposal to change its product specifications to allow up to five percent biodiesel to be injected into ULSD on the Greensboro Line Segments is just and reasonable, and not unduly discriminatory or unduly preferential.

50. The Commission’s cases on determining jurisdiction cited by the parties such as *Kerr-McGee, Lakehead,* and *TE Products* state that the Commission has jurisdiction under the ICA when the facilities or services are necessary or integral to the transportation function. In this case, the biodiesel blending service provided by Texon is not integral or necessary to the transportation function provided by Colonial because Colonial is capable of transporting ULSD on its Greensboro Line Segments with or without biodiesel. Despite the arguments of Murphy, Colonial is not providing any type of blending service because it is Texon’s injection of the biodiesel into the ULSD stream that accomplishes the in-line blending. There is nothing that Colonial does during its transportation of Grade 62 that effectuates this blending. There are various ways to accomplish the blending of ULSD and biodiesel. It can be done in-line through a pipe or hose as is being done here. The other methods are splash-blending, in-tank blending and rack-blending. These types of blending occur at different points in the supply chain. However, they all have in common the fact that the blending occurs through the introduction of the biodiesel into ULSD through sufficient pressure or by agitation through movement. Colonial has merely provided its shippers the opportunity to blend biodiesel into ULSD in a convenient way at their option by providing Texon access to the pipeline at the Greensboro Tank Farm. As the *TE Products* order discussed above recognized, there are a host of services that can be provided by a pipeline, its affiliate, or a third party, that are not necessary or integral to the transportation function and are therefore non-jurisdictional. In this particular case, any contractual or financial arrangements between Colonial and Texon, or Texon and Colonial’s shippers, are irrelevant to the Commission’s jurisdiction over the oil pipeline’s transportation function.

51. The Commission finds that all aspects of Colonial’s transportation of ULSD, the injection of biodiesel into Colonial’s system, and the quality specifications for ULSD, are either already in Colonial’s FERC Tariff, or have been proposed to be put into Colonial’s tariff through this filing. These provisions set a reasonable and not unduly discriminatory
framework for the transportation of new Grade 62. In sum, the rates, and terms and conditions of services that do actually affect the jurisdictional transportation of ULSD in its blended form with biodiesel, or of ULSD without biodiesel, are appropriately described in the Colonial Tariff, and the additional information sought by Murphy is not pertinent to the Commission’s jurisdiction or regulatory purview.

52. The next issue to be addressed is whether Colonial’s proposal to change the product specifications for ULSD to allow for the blending of up to five percent biodiesel is just and reasonable, and not unduly discriminatory or preferential. As Colonial has observed in its comments summarized above, a pipeline has the ability to determine the services that it offers. This includes what products it will accept for shipment and the specifications for its products. In this proceeding, Colonial has made the choice to ship ULSD with up to five percent biodiesel. Colonial has shown that ULSD with up to five percent is commercially acceptable in the industry because the ATSM standards organization has determined that type of ULSD to be “fit for purpose.” Murphy has not presented anything in its comments that challenges this assertion. Moreover, Murphy’s argument that Colonial’s proposal is not just and reasonable because Murphy puts in clear ULSD and receives ULSD with up to five percent biodiesel is incorrect. As was observed by Colonial, oil pipelines do not track molecules of the product. A shipper does not receive the exact molecules that were put into the system and is only entitled to receive product that is within the pipeline’s specifications that are commercially acceptable. Accordingly, the Commission finds that Colonial’s revised product specifications for ULSD are just and reasonable.

53. Notwithstanding that Murphy strenuously asserts Colonial’s proposal is not just and reasonable and is unduly discriminatory or preferential, the Commission finds that these assertions are all based on Murphy’s preference that Colonial not provide the option of blending on its system (or at least continue to provide transportation service for classic clear ULSD) so that Murphy can blend biodiesel with ULSD after Colonial provides transportation service, which would more effectively support Murphy’s particular business model.

54. Murphy argues, for example, that Texon and shippers using Texon’s blending service have an undue preference because they have the ability to choose when to blend biodiesel with ULSD on the Greensboro Line Segments to the detriment of Murphy or other shippers who might want to blend using other methods and at other locations. Murphy also asserts that Colonial is giving this advantage because it will determine how much biodiesel can be blended. The Commission finds that Colonial’s proposal to allow blending through the use of Texon’s service does not create an undue preference and is not unduly discriminatory. Colonial has allowed Texon the opportunity to provide this optional non-jurisdictional service in response to shippers who want to meet certain fuel blending benchmarks set by EPA regulation. No shipper is forced to take this service. The tariff changes to Grade 62 specifications are Colonial’s response to the demands of
the market. In addition, no advantage is created inasmuch as Colonial will tell Texon and all shippers how much biodiesel can be injected into the ULSD on the Greensboro Line Segments based upon the volume of ULSD being shipped during a nomination cycle, in order to have the ULSD remain within the product specification of up to five percent biodiesel. Further, nothing prevents Murphy from doing additional blending beyond the up to five percent biodiesel blended ULSD it will receive from Colonial. Even though Murphy has determined that the additional testing and measurement needed to blend above the five percent ULSD and ensure that it meets North Carolina’s more stringent labeling requirements would be expensive and time consuming, this is more an issue related to a particular state requirement, not Colonial’s transportation of new Grade 62 ULSD.

55. Murphy asserts that Colonial’s proposal is not the optimal way to meet the fuel blending benchmarks and that less renewable fuel blending may occur as a result of Colonial’s proposal. Murphy asserts again that shippers who do not use Texon’s service and receive five percent ULSD from Colonial will not be able to further blend up to 20 percent ULSD because of the expense. While Colonial has stated that a reason for its proposal was to support fuel blending for its shippers, the amount or level of fuel blending that will occur is not precisely ascertainable and is essentially irrelevant to determining whether the proposal is just and reasonable under the ICA. Colonial has supported its tariff change by showing that new Grade 62 ULSD with up to five percent biodiesel is fit for purpose based on commercially accepted standards, and that the Texon blending service is not integral to Colonial’s transportation function. Nothing further is required. Accordingly, Colonial’s FERC Tariff Nos. 98.31.0 and 1.5.0 will be permitted to take effect without any further changes or modifications on February 24, 2018 after the seven-month suspension period ends.

The Commission orders:

Colonial’s FERC Tariff Nos. 98.31.0 and 1.5.0 will be permitted to take effect without any further changes or modifications on February 24, 2018.

By the Commission.

( SEAL )

Nathaniel J. Davis, Sr.,
Deputy Secretary.