172 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

TransMontaigne Partners L.P. and Metroplex Energy, Inc.
v.
Colonial Pipeline Company

Docket No. OR19-23-000

ORDER ON COMPLAINT

(Issued July 8, 2020)

1. On May 1, 2019, TransMontaigne Partners L.P. (TransMontaigne) and Metroplex Energy, Inc. (Metroplex) (Complainants) filed a Complaint against Colonial Pipeline Company (Colonial). Complainants allege that Colonial violates the prohibition against undue preference in section 3(1) of the Interstate Commerce Act (ICA)[1] by charging lower transportation rates to shippers using storage at Baton Rouge, Louisiana, compared to shippers using storage at Collins, Mississippi. Complainants also allege that Colonial violates sections 6(1) and 6(7) of the ICA because Colonial's tariff does not specify when Colonial will assess different transportation rates to shippers using different storage facilities along its system. In the Complaint, Metroplex seeks damages based upon Colonial's alleged violations of sections 3(1), 6(1), and 6(7) of the ICA.[2]

2. For the reasons discussed below, we deny Complainants' allegations of undue preference pursuant to section 3(1),[3] but we require Colonial to modify its tariff to define the circumstances in which Colonial will designate a particular storage service

[1] 49 U.S.C. App. § 1 *et seq.* (1988).

[2] Complainants do not allege that TransMontaigne is entitled to any damages.

[3] ICA section 3(1) provides, "It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, [or] locality . . . in any respect whatsoever."

as "in-transit" storage for purposes of determining transportation rates, consistent with sections 6(1) and 6(7) of the ICA.[4] We also deny Metroplex's requested damages.

I. Background

3. Colonial provides interstate pipeline transportation of refined petroleum products from origins beginning in Houston, Texas, to destinations from the Gulf Coast to the Northeastern United States. Storage for petroleum products is available at various points along Colonial's system, including at Baton Rouge, Louisiana, and Collins, Mississippi. At Baton Rouge, Colonial leases from an affiliate (Energy Logistics Solutions, LLC (ELS)) storage capable of receiving several different petroleum products. At Collins, TransMontaigne owns and operates a storage facility.[5] Both TransMontaigne and Metroplex ship on Colonial, and Metroplex uses TransMontaigne's storage facility at Collins.

4. When a pipeline charges one through rate for transportation service between an origin and destination notwithstanding the use of an intermediate service, that intermediate service is referred to as an "in-transit" service.[6] In-transit storage is one example of in-transit service. Colonial permits in-transit treatment for storage at Baton Rouge, but not at Collins. As a result, Colonial charges shippers using Colonial's non-jurisdictional storage at Baton Rouge the through rate from the origin where product is first placed on the pipeline (e.g., Houston) to the final destination (e.g., Charlotte) notwithstanding the use of intermediate storage at Baton Rouge. In contrast, for shippers using non-jurisdictional storage at Collins, Colonial charges the sum of two local rates,

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[4] ICA section 6(1) requires every common carrier to "file with the Commission . . . schedules showing all the rates, fares, and charges for transportation" on the routes it serves and "all . . . storage charges . . . and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges." ICA section 6(7) prohibits a carrier from collecting anything other than the filed rate for "transportation of . . . property, or for any service in connection therewith" and further prohibits "extend[ing] to any shipper or person any privileges or facilities in the transportation of . . . property, except such as are specified in such tariffs."

[5] As part of the storage services, blending services are available at the Collins and the Baton Rouge facilities. Blendstocks such as butane may be mixed with gasoline at the Collins and the Baton Rouge storage facilities. When blendstocks are mixed with gasoline this increases the volume of gasoline. Complaint at 20.

[6] Some in-transit services can also involve an additional charge or premium above the through rate. *Koch v. Penn. R.R. Co.*, 10 I.C.C. 675, 676 (1910). However, there are no premium jurisdictional charges associated with Colonial's in-transit service at Baton Rouge and the charge for the storage itself is non-jurisdictional.

first for transportation from the origin (e.g., Houston) to Collins and second for transportation from Collins to the final destination (e.g., Charlotte).[7]

5. Whether or not a storage service receives "in-transit" treatment affects the transportation rate paid by shippers using that storage service. For example, if a shipper moving product from Houston to Charlotte uses intermediate storage at Baton Rouge, that shipper pays a through transportation rate of 135.31 cents per barrel (cents/bbl). In contrast, if a shipper makes the same movement from Houston to Charlotte but places product in storage at Collins instead of Baton Rouge, that shipper pays two local transportation rates (one from Houston to Collins and another from Collins to Charlotte) for a total of 193.89 cents/bbl.[8] Thus, in this example, the shipper using storage at Collins incurs a transportation rate that is 43% higher than the shipper using storage at Baton Rouge for the same ultimate movement. As Complainants assert, similar disparities exist at other origin and destination points on Colonial's system.[9]

6. Although Colonial permitted in-transit treatment for storage at Collins between 2000 and 2016,[10] all parties agree that Colonial no longer assigns in-transit treatment to the storage facilities at Collins.[11] Moreover, Colonial's tariff currently neither identifies where in-transit storage is available nor specifies under what conditions Colonial would grant in-transit treatment to a storage facility.

II. Complaint

7. Complainants allege that Colonial fails to justify its practice of treating storage at Baton Rouge as in-transit storage for the purpose of determining transportation rates while denying the same in-transit treatment of the storage at Collins.[12] Accordingly

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[7] Colonial Answer, Ex. 1 at 16 (Gardner Aff.).

[8] The local rate from Houston to Collins is 95.60 cents/bbl. The local rate from Collins to Charlotte is 98.29 cents/bbl. Complaint, Ex. 4 (Colonial FERC Tariff No. 99.47.0).

[9] *Id.*

[10] Between 2000 and 2016, Colonial offered in-transit treatment for certain storage facilities at Collins while Colonial leased capacity at that location. However, once Colonial's lease expired, Colonial began denying in-transit treatment for the storage at Collins. Gardner Aff. at 17-18, 30-33.

[11] The in-transit storage treatment at Baton Rouge only applies to gasoline stored at Baton Rouge, not other products. *Id.* at 6.

[12] Complaint at 29-31 (citing *Indianapolis Freight Bureau v. Cleveland,*

Complainants assert that Colonial violated the prohibition against undue preference in ICA section 3(1).

8. Complainants also allege that Colonial violated the tariff filing requirements of ICA sections 6(1) and 6(7) because Colonial's tariff fails to describe the terms under which it will treat storage as in-transit for purposes of determining transportation rates.[13] Complainants assert that Colonial should be required to modify its tariff to clarify the circumstances in which it will permit in-transit storage and to specify that in-transit treatment will be available for storage facilities owned by third parties.[14] Complainants state that Colonial should specify any conditions that must be met for a shipper to use in-transit storage.[15]

9. Finally, Metroplex seeks monetary damages for additional charges that it allegedly incurred as a result of Colonial's practices involving in-transit storage.[16] These include additional transportation charges Metroplex incurred on Colonial, as well as other costs it alleges that it incurred by seeking transportation and storage alternatives as a result of Colonial's in-transit storage policies.

III. Notice, Interventions, and Responsive Pleadings

10. Notice of the Complaint was issued on May 3, 2019, providing for answers, protests, and interventions to be filed on or before May 31, 2019. Colonial filed an Answer to the Complaint on May 31, 2019 as permitted by Commission regulations.

Cincinnati, Chicago, & St. Louis Ry. Co., 26 I.C.C. 53, 56-58 (1913) (finding withholding reduced rates to certain locations with grain milling-in-transit privileges, but not others, unduly discriminatory); *Koch*, 10 I.C.C. at 681-82 (holding that while "[s]hippers are not entitled as a matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination . . . allowance of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another"); *S. Ill. Millers' Assn.*, 23 I.C.C. 672, 677-78 (1912)).

[13] *Id.* at 52-56.

[14] *Id.* at 57-58.

[15] *Id.* at 58.

[16] *Id.* at 58-59.

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On June 17, 2019, Complainants submitted an answer responding to Colonial's Answer. On July 5, 2019, Colonial responded to Complainants' answer.[17]

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all unopposed and timely filed motions to intervene and any unopposed motions to intervene out of time filed before the issuance date of this order are granted.[18] Rule 213 of the Commission's Rules of Practice and Procedure prohibits answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept Complainants' June 17, 2019 answer or Colonial's July 5, 2019 response and will, therefore, reject them.

12. In its May 31, 2019 Answer, Colonial argues that Complainants raise issues that are not subject to Commission review and are entirely within Colonial's own discretion. First, Colonial claims that the in-transit treatment of storage is not subject to the Commission's jurisdiction.[19] As a result, Colonial asserts that there can be no violation of ICA sections 3 or 6 when the services at issue are not jurisdictional and thus not subject to the requirements of the ICA.[20] Second, Colonial states that the Commission cannot require Colonial to enter into an agreement to provide non-jurisdictional storage services.[21] Finally, Colonial seeks to justify its rate disparity practices involving in-transit storage on the basis that under the Commission's indexing policies it can reduce its transportation rates below the ceiling level.[22] Accordingly, Colonial asserts that the through rate it charges to shippers using storage at Baton Rouge is effectively a discount below the ceiling level whereas the decision to charge two local rates to shippers using storage at Collins reflects the exercise of Colonial's discretion to charge a rate at the ceiling level.[23]

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[17] On January 29, 2020, Complainants filed a motion requesting expedited action. On February 12, 2020, Colonial filed an answer to that motion.

[18] 18 C.F.R. § 385.214 (2019).

[19] Colonial Answer at 19-26 (citing *Colonial Pipeline Co.*, 162 FERC ¶ 61,158, at P 50 (2018); *TE Prods. Pipeline Co., LLC*, 130 FERC ¶ 61,257, at P 13, *order on reh'g*, 131 FERC ¶ 61,277 (2010)).

[20] *Id.* at 18, 27-29.

[21] *Id.* at 27-28.

[22] *Id.* at 34-41.

[23] *Id.*

13. In the event the Complaint is not dismissed for lack of Commission jurisdiction, Colonial also states that it has not violated the prohibition against undue preference in section 3(1) of the ICA by permitting in-transit storage at Baton Rouge while denying it at Collins. Colonial asserts that operational constraints justify denial of in-transit treatment of storage at Collins.[24] Moreover, Colonial emphasizes that shippers using storage at Collins do not have the same obligation to continue transportation on Colonial as shippers using storage at Baton Rouge.[25]

14. Colonial argues that it has not violated section 6 of the ICA by failing to set forth terms and charges for in-transit storage service in its tariff because the storage services at issue are not jurisdictional.[26] Colonial further states that it should not be required to modify its tariff to permit in-transit treatment of third-party storage facilities.[27] Colonial emphasizes that when barrels are at third-party storage—i.e., not within Colonial's custody—it is not possible for Colonial to ensure that the barrels are in fact making a through movement on Colonial's pipeline that should be entitled to in-transit treatment.[28] Colonial asserts that requiring it to offer in-transit treatment of third-party storage would "wreak havoc on its system operations"[29] and would require it to enter into non-jurisdictional agreements that the Commission cannot require Colonial to enter.[30]

15. Colonial asserts that the Commission should reject Complainants' damages claims as unsubstantiated.[31]

IV. Discussion

16. As discussed below, we grant the Complaint in part and deny the Complaint in part. We find that the Complaint raises issues involving Colonial's transportation rates which are jurisdictional and subject to Commission review. Although we find that Colonial has not violated section 3(1) of the ICA because shippers using storage at

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[24] *Id.* at 41-46.

[25] *Id.* at 53-55.

[26] *Id.* at 28-29.

[27] *Id.* at 50-59.

[28] *Id.* at 56.

[29] *Id.* at 50-51.

[30] *Id.* at 51-55.

[31] *Id.* at 60-62.

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Collins and Baton Rouge are not similarly situated, and thus deny that part of the Complaint, we grant the Complaint in part by holding that Colonial must include provisions in its tariff defining the circumstances in which Colonial will designate a particular storage service as "in-transit" storage for purposes of determining transportation rates. We deny Metroplex's request for damages.

A. The Complaint Raises Matters Subject to Commission Review

17. The Commission has jurisdiction over the pipeline transportation rate issues raised by Complainants. Although we agree with Colonial that the Commission does not have jurisdiction over the storage services provided at Collins and Baton Rouge,[32] the Commission does have jurisdiction over Colonial's pipeline transportation rates, which necessarily includes jurisdiction over Colonial's policy for determining when it treats a storage service as "in-transit" and thus charges a shipper a pipeline transportation through rate as opposed to two local pipeline transportation rates. Accordingly, the Commission has jurisdiction over the issues raised by Complainants, i.e., Colonial's assessment of different pipeline transportation rates to shippers using intermediate storage at Baton Rouge as compared to shippers using intermediate storage at Collins.[33]

18. We reject as inapposite Colonial's argument that because the Commission cannot require Colonial to provide non-jurisdictional storage services, the Commission lacks jurisdiction to address the transportation rate issues raised by Complainants.[34] By addressing this Complaint, we are neither requiring Colonial to provide non-jurisdictional storage nor regulating non-jurisdictional storage service. We are only addressing Colonial's transportation rates, which are within the Commission's jurisdiction.

19. We also reject Colonial's argument that the through rate it assessed to shippers using storage at Baton Rouge is a "discount" rate and that the pipeline has discretion to

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[32] *Id.* at 19-26 (citing *TE Prods. Pipeline Co., LLC*, 130 FERC ¶ 61,257 at P 13).

[33] The only directly applicable precedents involving in-transit services cited by Complainants are decisions by the Interstate Commerce Commission (ICC). The ICC was the Commission's predecessor agency that administered the ICA to certain common carriers, including both railroads and oil pipelines. In those decisions, which date from the early 1900s, the ICC required that a common carrier must comply with the ICA's non-discrimination provisions when defining in-transit services. *Indianapolis Freight Bureau v. Cleveland, Cincinnati, Chicago, & St. Louis Ry. Co.*, 26 I.C.C. 53, 56-58 (1913); *Koch*, 10 I.C.C. at 681-82; *So. Ill. Millers' Assn.*, 23 I.C.C. 672, 677-78 (1912).

[34] Colonial Answer at 27-28.

deny a similar "discount" to shippers using storage at Collins.[35] The cases cited by Colonial involve situations in which the pipeline changed its rates below the index ceiling level for movements between a particular origin and destination on its system.[36] However, whether the rates were at the ceiling level or discounted from the ceiling level, the pipelines in those proceedings applied the same rate to all shippers moving between the same origin and destination points. In contrast, the question presented here is not whether Colonial can set the rate from Houston to Charlotte below the ceiling level and apply that same discounted rate to all shippers moving product from Houston to Charlotte. Rather, Complainants raise the issue whether Colonial has violated the ICA by determining transportation rates from various origins and destinations (e.g., Houston to Charlotte) based upon allowing "in-transit" treatment of storage at Baton Rouge but not Collins.

B. ICA Section 3(1)

20. We deny Complainants' argument that Colonial's actions are unduly preferential under section 3(1) of the ICA. First, permitting in-transit treatment of storage at Collins would adversely affect Colonial's pipeline operations. Second, shippers using storage at Collins are not similarly required to continue pipeline transportation on Colonial as are shippers using storage at Baton Rouge.

1. Permitting in-transit treatment of storage at Collins would adversely affect Colonial's system operations.

21. We deny Complainants' section 3(1) claim because permitting in-transit treatment of storage at Collins would adversely affect Colonial's system operations. Pipelines may deny in-transit storage treatment where offering in-transit storage would negatively affect system operations.[37] The facts in this proceeding support a finding that offering in-transit

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[35] *Id.* at 34-41.

[36] *Id.* (citing *Shell Pipeline Co.*, 100 FERC ¶ 61,139 (2002); *Dome Pipeline Corp.*, 117 FERC ¶ 61,364 (2006); *Texaco Pipeline Inc.*, 72 FERC ¶ 61,313 (1995)). Pursuant to the Commission's indexing methodology, oil pipelines change their rate ceiling levels effective every July 1 by "multiplying the previous index year's ceiling level by the most recent index published by the Commission." 18 C.F.R. § 342.3(d)(1) (2019). Under the Commission's indexing policies, a carrier may change an existing rate at any time to a level that does not exceed the ceiling level of that rate. 18 C.F.R. § 342.3(a) (2019).

[37] *See Koch.,* 10 I.C.C. 675 (explaining that the offering of an in-transit service at one location but not others is not unduly preferential treatment under section 3(1) of the ICA if the different treatment is supported by the different conditions at each point); *see also Complex Consol. Edison*, 165 F.3d 992, 1012-1013 (1999) (affirming a

treatment of storage at Collins would adversely affect Colonial's system operations. According to Colonial, when Colonial delivers product into storage at Collins, the withdrawal of product from the pipeline reduces the pipeline's pressure and thus reduces the flow rate downstream from Collins.[38] Giving in-transit treatment to storage at Collins would further increase the withdrawals from Colonial into storage at Collins, further reducing Colonial's flow rate and its ability to make downstream deliveries.

22. Additionally, as Colonial's answer demonstrates, significant and longstanding capacity constraints exist on Colonial's pipeline at Collins.[39] Collins has long been a "choke" point on Colonial's pipeline system where shipper nominations through that portion of Colonial's pipeline frequently exceed capacity.[40] Accordingly, when shippers using storage at Collins re-insert product into Colonial, this exacerbates those capacity constraints. By increasing shipper use of the storage facilities at Collins, in-transit treatment would aggravate capacity constraints.[41]

23. In contrast, as Colonial explains, withdrawals from Colonial into storage at Baton Rouge do not impose similarly adverse consequences for Colonial's operations.[42] Colonial explains that the high volume of receipts on Colonial at Baton Rouge more than offsets the relatively minimal deliveries at that location.[43] As a result, increased withdrawals from Colonial into storage at Baton Rouge do not adversely affect the

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Commission finding that different policies between two sets of customers was not unduly discriminatory because the two sets of customers were not similarly situated due to operational constraints at different points).

[38] Gardner Aff. at 10.

[39] Colonial Answer at 17 (citing Gardner Aff. at 11); *see also Plantation v. Colonial*, 104 FERC ¶ 61,271, at PP 5-6 (2003); *Colonial Pipeline*, 155 FERC ¶ 61,214, at P 8 (2016); *Colonial Pipeline*, 157 FERC ¶ 61,173, at P 8 (2016).

[40] Colonial Answer at 17-18 (citing Gardner Aff. at 11).

[41] Gardner Aff. at 10-11. Conversely, the removal of product into storage at Collins would not typically alleviate the constraint on Colonial's system at Collins. The constraint at Collins is seasonal, and Colonial is most likely to be constrained at Collins when there is a high demand at points downstream of Collins. In contrast, shippers are most likely to use storage at Collins when downstream demand is less. Gardner Aff. at 34-36.

[42] Colonial Answer at 15; Gardner Aff. at 9.

[43] Gardner Aff. at 9.

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pipeline's flow rate. Moreover, Baton Rouge is upstream from the constrained portion of the pipeline where shippers' nominations regularly exceed pipeline capacity. Thus, in-transit treatment for storage at Baton Rouge is unlikely to exacerbate constraints on Colonial's system.[44]

24. Given these operational distinctions, we find that Colonial does not engage in undue discrimination when it offers in-transit treatment of storage at Baton Rouge while denying in-transit treatment of storage at Collins.

2. Shippers using storage at Collins have not made the same contractual commitments to continue transportation on Colonial as shippers using storage at Baton Rouge.

25. We also deny Complainants' section 3(1) claim because shippers using storage at Collins have not made the same contractual commitments to continue transportation on Colonial as shippers using storage at Baton Rouge. Storage is only "in-transit storage" if it serves as an intermediate pause in one transportation movement between the origin and the final destination. Otherwise, the shipper is making two separate transportation movements: first, from the origin into storage and, second, from storage to the destination.

26. Storage at Baton Rouge serves as an intermediate pause in one transportation movement. When product is removed from storage at Baton Rouge, shippers are obligated to place those volumes back onto the Colonial system for transportation to downstream delivery destinations.[45] Furthermore, shippers benefiting from in-transit treatment of storage at Baton Rouge must provide Colonial information regarding movements into and out of storage, ensuring that the shipper is actually completing a transportation movement on Colonial in which storage at Baton Rouge is only an intermediate break.[46]

27. In contrast, shippers are not using storage at Collins as an intermediate pause in one through transportation movement on Colonial's system. Unlike a shipper at Baton

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[44] Colonial Answer at 28.

[45] Gardner Aff. at 13 (stating that "the shipper has the *obligation* to continue to transport the barrels on Colonial, and not utilize a competing carrier for the next leg of the transportation movement"). *See also id.* at 8 (explaining that "any barrels that are delivered into the ELS facility at Baton Rouge must be re-delivered into Colonial's system for further transportation as there is no outlet connected to the ELS facility other than Colonial itself").

[46] *Id.* at 6.

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Rouge, a shipper using storage at Collins is not obligated to place that product back onto Colonial when it removes the product from storage,[47] and Complainants make no representation that they offered to make such a commitment in return for in-transit treatment of storage at Collins.[48] Rather, it appears that Complainants seek to place product into storage at Collins while preserving the option to subsequently determine whether to move the product further on Colonial or to use other transportation alternatives.[49] Thus, to the extent shippers subsequently move the stored product on Colonial to destinations downstream of Collins, this is a second, separate transportation movement that was not obligatory at the time the product was placed into storage at Collins. Accordingly, we conclude that Colonial did not violate section 3(1) of the ICA when it denied Complainants' requests for in-transit treatment of storage at Collins.

C. ICA Sections 6(1) and 6(7)

28. We grant one aspect of the Complaint to require Colonial to modify its tariff to specify when and where it will accord in-transit treatment to storage consistent with sections 6(1) and 6(7) of the ICA.

29. Section 6(1) of the ICA provides that "[e]very common carrier subject to the provisions of this chapter shall file with the Commission . . . schedules showing the rates, fares and charges for transportation . . . ." Section 6(7) of the ICA includes similar requirements.[50] These statutory requirements are codified in the Commission's

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[47] Complaint at 11 (explaining that after product is placed into storage at Collins, Metroplex subsequently sells the product to third parties, transports the product on Plantation pipeline, or transports the product on Colonial); Gardner Aff. at 8-9.

[48] When Colonial previously permitted in-transit storage at Collins between 2000-2016, the shippers did not make such a commitment. However, that is not relevant in this proceeding. In order to show undue preference, Complainants have the burden to demonstrate that shippers using storage at Collins are similarly situated to shippers using storage at Baton Rouge. Given that the shippers at Baton Rouge committed that further movements of the product in storage would be made on Colonial's system, Complainants must demonstrate that they also offered to make a similar commitment for product placed into storage at Collins.

[49] Other options include continued long-haul transportation on the Plantation Pipeline or redirecting the product locally via truck.

[50] ICA section 6(7) provides in relevant part that a carrier shall not "engage or participate in the transportation of . . . property . . . unless the rates, fares, and charges upon which the same [is] transported by said carrier have been filed and published in

regulations. Section 341.8 of the Commission's regulations requires pipelines to "publish in their tariffs rules which in any way increase or decrease the amount to be paid on any shipment."[51]

30. Sections 6(1) and 6(7) of the ICA and section 341.8 of the Commission regulations apply here because the terms on which Colonial offers in-transit treatment of storage service determine its transportation rates. This is because whether or not Colonial designates a certain storage facility for "in-transit" treatment determines whether a shipper will pay a through transportation rate or the higher sum of two local rates.[52] Accordingly, we direct Colonial to modify its tariff to identify both: (1) the locations/facilities where Colonial grants in-transit treatment of a storage service; and (2) for those locations/facilities where in-transit treatment of storage is not currently offered, the general criteria that will determine whether a location/facility will become eligible for in-transit treatment of storage services.

31. When modifying its tariff, Colonial may impose reasonable criteria for when storage service at a certain facility is eligible for in-transit treatment. These include, but are not limited to, the issues discussed above. For example, Colonial's tariff may preclude in-transit storage where the in-transit storage service affects system operations, such as reducing the flow rate.[53] Also as discussed above, as a condition of granting in-transit treatment of a particular storage facility, Colonial may require that when the product is removed from a storage facility receiving in-transit treatment, the shipper must return the product to Colonial for further downstream movement. Colonial may also require that any storage tank receiving in-transit storage treatment be wholly dedicated to

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accordance with the provisions of this chapter; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation . . . ."

[51] 18 C.F.R. § 341.8. Section 341.0(b)(1) likewise provides that the tariff must "contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff." *Id.* § 341.0(b)(1).

[52] As explained above, Commission jurisdiction applies to Colonial's policies for according in-transit treatment to storage facilities and Colonial's arguments to the contrary are not persuasive. *See supra* PP 16-18.

[53] *Koch,* 10 I.C.C. 675 (explaining that the offering of an in-transit service at one location but not others is not unduly preferential treatment under section 3(1) of the ICA if the different treatment is supported by the different conditions at each point); *see also Complex Consol. Edison*, 165 F.3d at 1012-13 (affirming a Commission finding that different policies between two sets of customers was not unduly discriminatory because the two sets of customers were not similarly situated due to operational constraints at different points).

movements on Colonial. Colonial may also require the shipper and the third-party storage facility to provide information verifying compliance with these commitments.[54]

32. However, contrary to Colonial's position in its answer, Colonial may not restrict in-transit treatment solely to storage facilities owned or operated by Colonial itself.[55] We do not adopt Colonial's argument that only shippers using Colonial-owned, non-jurisdictional storage would be eligible for the reduced transportation rates resulting from in-transit treatment of the storage service.[56] Colonial cites no precedent in which the availability of in-transit treatment of service at a facility depended solely upon whether the regulated entity owned the facility. Moreover, whether the product is placed into Colonial-owned storage at Baton Rouge or third-party storage such as at Collins, product placed into non-jurisdictional storage temporarily leaves the jurisdictional interstate pipeline movement regulated by the Commission. Accordingly, for purposes of determining whether the storage is merely an intermediate pause (i.e., warranting in-transit treatment) or a complete stoppage of the jurisdictional pipeline movement, the ownership of the non-jurisdictional storage is not dispositive.

33. We are not persuaded by Colonial's argument that requiring it to offer in-transit treatment of third-party storage will "wreak havoc on its system operations."[57] As discussed above, Colonial may impose reasonable criteria limiting where it will permit in-transit treatment of storage services, such as limiting in-transit treatment to locations

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[54] This addresses Colonial's concern that it cannot track volumes placed into third party storage. Colonial Answer at 59 (stating that "If Colonial is required to provide, or allow others to provide, in-transit storage services at locations at which Colonial has no commercial control or at which there are other outlets for the product, Colonial will not be able to properly track the volumes and ensure that barrels that move into and out of storage are properly assessed the correct rate").

[55] When Colonial delivers product at the TransMontaigne terminal, Colonial issues a custody-transfer ticket, meaning that custody and control of the product has been transferred from Colonial to TransMontaigne. Colonial argues that because Colonial no longer has custody of product placed into storage at Collins, the storage is no longer "in-transit." In contrast, when product is placed into Colonial's storage at Baton Rouge, Colonial retains custody of the product and no custody-transfer ticket issues. Colonial further avers that it would cause major operational issues to grant in-transit treatment to third-party owned storage facilities, claiming that Colonial would be unable to monitor in-transit storage service at the 250 terminals on its pipeline system. *Id.* at 51-55.

[56] *See supra* P 5.

[57] Colonial Answer at 50; *see also id.* at 51 (stating that offering in-transit treatment of storage at all connected terminals would cause "major operational issues").

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where it would not impose operational issues. Moreover, at most, in-transit treatment of storage is only relevant at the five points on Colonial's system where the shipper can both remove the product from Colonial's pipeline (delivery points) and place the product back onto Colonial's pipeline (receipt points).[58] If the shipper cannot place the product back onto Colonial's system from a storage facility, the issue whether to give in-transit treatment for product in that storage facility does not arise.[59]

34. Likewise, we are unpersuaded by Colonial's argument that any requirement to include tariff terms related to in-transit treatment of third-party owned storage exceeds the Commission's authority by requiring Colonial to enter into non-jurisdictional agreements that are not necessary and integral to the oil pipeline transportation service. Much like Colonial's other arguments involving jurisdiction, this argument is not persuasive. These tariff terms do not relate to the storage service itself or the rate for storage service. Rather, as discussed above, these terms merely specify when Colonial will offer in-transit treatment of storage for purposes of determining Colonial's pipeline transportation rates. Accordingly, these terms are necessary and integral to Colonial's transportation service. Colonial is not required to offer in-transit treatment of storage for purposes of determining its transportation rates. However, to the extent Colonial offers in-transit treatment of storage for purposes of determining its transportation rates, it must include the applicable terms in its tariff and provide the service on a nondiscriminatory basis.

D. Damages

35. We deny Metroplex's request for damages.[60] The requested damages are based upon a claim that Colonial should have provided in-transit treatment to volumes delivered to the storage facility at Collins. As discussed in this order, we find that Colonial's denial of in-transit treatment to volumes stored at Collins does not violate section 3(1) of the ICA's prohibition against undue preference. Although we find that Colonial should include in its tariff a description of where and when it will grant in-transit treatment to

[58] These five points are Beaumont, Texas; Baton Rouge and E. Baton Rouge Dock; Collins; and Booth, Pennsylvania. Colonial Tariff FERC 99.56.0. In-transit treatment of storage would not be available at all 250 terminals attached to Colonial's system.

[59] In other words, as discussed above, the question whether a shipper should pay one through rate or two local rates (i.e., whether to give in-transit treatment) only arises in the situation in which a shipper moves product on Colonial from an origin (e.g., Houston) to intermediate storage and then, later, onto a final destination on Colonial (e.g., Charlotte).

[60] TransMontaigne did not claim that it was entitled to any damages.

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storage services, this does not obligate Colonial to provide in-transit treatment of the storage at Collins. Accordingly, we deny Metroplex's request for damages.

The Commission orders:

The Complaint is denied in part and granted in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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