

156 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colonial Pipeline Company

Docket No. IS16-61-000

ORDER FOLLOWING TECHNICAL CONFERENCE REJECTING TARIFF

(Issued July 1, 2016)

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

Colonial's Revised Proposal

2. Colonial asserts that its proposed revisions are a reasonable means to address the current harm to shippers resulting from Colonial's existing rules. Colonial submits that the record demonstrates that Colonial's constrained system and current practice of allowing virtually unlimited history transfers has led to the proliferation of history transfers unconnected to business sales or assignments, designed solely to take advantage

¹ *Colonial Pipeline Co.*, 153 FERC ¶ 61,270 (2015).

of Colonial's rounding increment to allow some shippers to increase their capacity allocations above their historical movements.² Because Colonial is in apportionment, Colonial contends that these practices directly reduce the capacity of other shippers that seek to build history through actual movements of product on the pipeline. Colonial argues that this materially undermines the basic purpose of a historical prorationing policy, which is to reward shipper loyalty based on each shipper's history of movements on the pipeline. Notwithstanding the validity of the tariff changes as originally filed, Colonial asserts its revised tariff proposal addresses certain of shippers' principal concerns and should be accepted by the Commission.

3. Colonial's original proposal limited shipper history transfers to those in connection with the sale of all of a shipper's business or an entire business line. Colonial's proposed revisions replaced the reference to "business line" with a "Significant Portion of its business," which is defined as "a component of the business that is associated with history of no less than 15,000 barrels per Cycle." Colonial states that the history required to support or to fulfill contractual obligations tied to the portion of the business being sold must be at least 15,000 barrels. Colonial contends that this provides a clear and objective standard for identifying what portion of a shipper's business must be transferred or assigned in situations in which a shipper is not completely exiting its business with Colonial. Shippers must also establish that the history requested for transfer is associated with the portion of the business being sold or assigned.

4. In addition, Colonial added "assignment" to the sentence providing that a shipper's history may be transferred in connection with a sale or assignment of all of its business or a significant portion of its business. Colonial included "assignment" to provide that history may be transferred not only in connection with a sale but also a transfer of rights or property.

5. Following the technical conference, Colonial received a proposal to limit the scope of the history transfer provision such that it applies only to Regular Shippers and not New Shippers. Colonial did not adopt the proposal as part of its revised tariff proposal, because Colonial argues it is inappropriate to distinguish among classes of shippers for purposes of history transfers.

6. Colonial states that the tariff includes changes to prevent shippers from using affiliated entities to receive a greater capacity allocation than that to which they would otherwise be entitled. During the technical conference and in protests, shippers expressed concerns that the changes as implemented would penalize existing shipper affiliates that operate in an independent manner. Colonial proposed language stating that

² Colonial's Initial Tariff Filing at 3 (Nov. 3, 2015).

“Notwithstanding the foregoing, history transfers will only be permitted between Affiliates in connection with the consolidation of some or all of the shipper codes into one shipper code.” Colonial submits that this gives affiliates the option to consolidate codes should their business model change in the future but prevents shippers from using affiliate entities in order to engage in history transfers to maximize their capacity allocations to the detriment of other shippers. Colonial states that limiting history transfers to those in which shipper codes are consolidated will prevent shippers from creating affiliate entities or multiple shipping codes solely to engage in history transfers in order to obtain more capacity than they would otherwise be entitled.

7. The tariff amends Colonial’s liability policy to limit liability for indirect damages. The proposed changes provide that Colonial shall not be liable for “any incidental, consequential, lost profits, punitive and other indirect damages of any kind regardless of whether such damages, losses or claims arise in tort, strict liability, fraud or under any other theory of liability.” Colonial asserts that it never intended the changes to insulate itself from liability for gross negligence. Nonetheless, concerns were expressed during the technical conference and in the protests that the provision is overly broad and inconsistent with Commission precedent in that it does not include an exception for indirect damages caused by Colonial’s gross negligence. In order to address these concerns, the revised tariff proposal limits liability for indirect damages “except to the extent it is shown that such damages were caused by [Colonial’s] gross negligence, bad faith or willful misconduct.”

8. Colonial states it is not proposing any revisions to the remaining tariff provisions as originally filed on November 3, 2015. Colonial does not propose any further refinements to its rounding and minimum tender provisions. The proposed tariff lowers the rounding increment for purposes of mainline Regular Shippers from 25,000 barrels to 5,000 barrels and reduces the minimum tender for mainline shipments from 25,000 barrels to 15,000 barrels. Colonial submits that the changes are intended to reduce the disparity between Regular Shippers’ history and their allocation, reduce the incentive for shippers to manipulate the rounding process through history transfers, and produce a more evenhanded rounding impact across Regular Shippers of all volume classes.³

9. Colonial does not propose any refinements to its initial proposal to lower the Shipper Batch Volume allocated to New Shippers during prorationing from 25,000 barrels to 15,000 barrels and to consolidate the two-tiered lottery system for allocating New Shipper volumes during prorationing into a one-step process. Colonial asserts that the purpose of the reduction in the Shipper Batch Volume is to be consistent with the

³ Colonial Initial Tariff Filing at 6-8 (discussing the disproportionate effect of the current rounding increment to Regular Shippers).

reduction in the minimum tender requirement and ensure that as many New Shippers as possible receive an award batch. Colonial submits that the consolidation of the New Shipper lottery process from a two-tiered system into a single step will simplify the process and be more consistent with the process used by numerous other pipelines and approved by the Commission.

10. Colonial does not propose any refinements to its change to remove “Collins, Plantation, Mississippi” as a location where a segregated, fungible or joint batch may be terminated. Colonial asserts this change does not remove Collins as a delivery point, will not prevent shippers from continuing to deliver volumes to Collins-Plantation, and will not deny shippers access to Plantation Pipeline at Collins. Colonial submits the change only removes Collins as a point where an entire Batch may terminate. Colonial states that as long as some of the same product in the Batch is moving downstream, a shipper can move volumes to Collins whether or not that individual shipper is also moving product to points downstream of Collins.

11. Colonial states that it is not making any revisions to its changes to: (1) lower the average per cycle history required for a New Shipper to become a Regular Shipper from 18,750 barrels to 11,250 barrels; and (2) lower the threshold Raw Historical Allocation a Regular Shipper must maintain on the mainlines in order to retain its Regular Shipper status from 15,000 barrels to 10,000 barrels.

Procedural Issues

12. A number of entities filed motions to intervene out of time. The Commission will grant the late interventions of BP Products North America, Inc.; Valero Marketing and Supply Company; Phillips 66 Company; Murphy Oil USA, Inc.; Shell Trading (US) Company; and Marathon Petroleum Company LP since their motions are unopposed and they have satisfied the requirements for late motions to intervene contained in Rule 214(d) of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214(d) (2015)). We also accept Public Citizen’s motion to intervene out of time, notwithstanding Colonial’s objection, because there is no disruption to the proceeding and its interest cannot be represented by other parties. The Commission, however, reminds Public Citizen, Inc. that in the future it cannot file a late motion to intervene in an electronic (doc-less) format and that it must fulfill the requirements of Rule 214(d) in the initial pleading and not in a subsequent answer to a motion opposing the intervention.

13. Sheetz, Inc. filed an electronic (doc-less) motion to intervene on February 16, 2016. The filing does not satisfy the requirements of Rule 214(d) because it does not address why the motion to intervene was filed out-of-time. Therefore, Sheetz, Inc. is not a party to the proceeding. The electronic motion to intervene indicated that Sheetz, Inc. supported a number of the aspects of Colonial’s proposal. The Commission will therefore construe the pleading as comments in support of Colonial’s proposal.

14. On January 15, 2016, after the initial order was issued in this proceeding, R. Gordon Gooch filed a Petition for Redress of Grievances pursuant to the First Amendment of the Constitution of the United States. Colonial filed a response asserting that Mr. Gooch has not filed either a motion to intervene in the proceeding or a protest of Colonial's changes to its Rules and Regulations Tariff No. 98.22.0 that are at issue. Colonial submits that Mr. Gooch filed a lengthy "Petition for Redress of Grievances" in which he levels a barrage of allegations against Colonial, oil pipelines in general, the practice of capacity brokering, and, more broadly, the Commission's regulations and policies regarding oil pipeline rate setting. Colonial contends that Mr. Gooch lacks standing, has not complied with the Commission's regulations, and has failed to state a proper basis for raising his unsupported assertions before the Commission. We dismiss Mr. Gooch's petition as procedurally deficient and, to the extent it raises issues other than Colonial's tariff filing, beyond the scope of this proceeding.⁴

Discussion

15. Our review of Colonial's proposal is governed by the requirements of the Interstate Commerce Act (ICA). As relevant here, section 1(4) of the ICA obligates an oil pipeline to provide and furnish transportation upon reasonable request. Furthermore, pursuant to section 3(1) of the ICA, an oil pipeline may not grant an undue or unreasonable preference or advantage to a shipper or particular group of shippers. Under section 15(7) of the ICA, an oil pipeline bears the burden of demonstrating that the proposed changes to its tariff are just and reasonable. As discussed below, we find that Colonial has failed to meet this burden, and we therefore reject its proposal.⁵ Based on consideration of the full record, we find that certain aspects of Colonial's proposal contravene sections 1(4) and 3(1) of the ICA by depriving New Shippers of their right to

⁴ The Commission dismissed a similar complaint and "petition for redress of grievances" Mr. Gooch filed against Colonial in 2012. *See R. Gordon Gooch v. Colonial Pipeline Co.*, 142 FERC ¶ 61,220, at PP 13-16 (2013) (dismissing complaint); *R. Gordon Gooch v. Federal Energy Regulatory Commission*, Judgment in Case No. 13-1148 (D.C. Cir., April 29, 2014) (unpublished order dismissing petition for review).

⁵ In this proceeding, Colonial has presented its proposed tariff as a comprehensive package. *See* Transmittal Letter, Colonial Revised Tariff Proposal (March 23, 2016) (stating that if the Commission does not accept the November 3, 2015 filing, it should approve the revised tariff). Thus, given the deficiencies discussed below, we reject both versions of the proposal and decline to approve only certain parts of the proposal. We do not, however, pre-judge whether any individual part of Colonial's proposal that is not specifically addressed in the order is just and reasonable.

obtain transportation upon reasonable request and granting an undue or unreasonable preference or advantage to Colonial's existing Regular Shippers.

16. In applying the requirements of the ICA, the Commission also considers the specific factual circumstances giving rise to Colonial's proposal. Since 2012, demand for transportation capacity on Colonial's mainline system has been greater than the available capacity, and Colonial has had to allocate space among its shippers pursuant to the prorationing policies in its tariff. Colonial asserts that the increasing number of shippers competing for capacity to transport refined products on Colonial had led a growing number of shippers to take advantage of unintended loopholes in Colonial's prorationing policy. Colonial contends that history transfers and rounding are used to obtain access to a greater amount of space on the pipeline than a shipper would be entitled under Colonial's capacity allocation program.

17. Colonial submits that the combination of unrestricted history transfer and current rounding and minimum tender provisions undermines the overall integrity of the allocation process. Colonial has asserted in its pleadings that the proposed changes to the capacity allocation program are required because certain shippers are gaming the system, taking advantage of unintended loopholes, and are receiving more space on the pipeline than to which they are entitled. Colonial states that "[t]he proliferation of history transfers over the past two years has created two classes of shippers who utilize history transfers, those looking to move actual product and those solely looking to profit from their history. It is the latter class that has created the current unregulated secondary market for history."⁶ Colonial asserts that the proposed changes to its tariff will ensure the integrity of the capacity allocation program, which is designed to fairly allocate capacity to shippers in times of constraints. Colonial asserts that its original tariff filing, as revised by its March 23, 2016 post-technical conference filing, is just and reasonable and represents reasonable accommodation of the competing interests of Colonial's shippers.

18. Whatever the rationales or justifications offered in support of Colonial's proposal, that proposal must comply with the requirements of the ICA to be just and reasonable. As noted above, the ICA requires that shippers have an opportunity to take service upon reasonable request, and we therefore must evaluate whether Colonial's proposal preserves that right. We find that Colonial's proposal – specifically, its proposed lottery system and the various proposed restrictions on history transfers – does not. While a lottery system and history transfer restrictions are not *per se* prohibited by the ICA, they cannot work individually or collectively as a bar to satisfying reasonable requests for

⁶ November 23, 2015 Response of Colonial at 8.

pipeline access. Yet, the combination of the two in the instant case and under the conditions prevailing on Colonial's pipeline would accomplish that prohibited result.

19. The lottery system proposed by Colonial does not appear to provide any meaningful opportunity for New Shippers to become Regular Shippers. As the New Shipper Group states:

Under the proposed tariff, a New Shipper can become a Regular Shipper by shipping an average of 11,250 barrels per cycle. Because the proposed lottery would award batches of 15,000 bbls, a New Shipper would need to win the lottery 75 percent of the time in order to achieve Regular Shipper status. If everyone who enters the lottery is awarded a batch (100 percent probability of winning), it would be easy for a New Shipper to meet the threshold within a year.

On the other hand, if only one-fourth of the lottery entrants receive capacity (25 percent probability of winning), the odds of winning 75 percent of the time and achieving the 11,250 bbl threshold would be close to one one-hundredth of one percent (0.01 percent). In other words, the average New Shipper could expect to achieve Regular Shipper status in 10,000 years. A lottery process offering New Shippers such a low probability of achieving Regular Shipper status would not qualify as a reasonable level of mobility and, therefore, Colonial would have no basis to maintain its distinction between Regular Shippers and New Shippers for capacity allocation purposes.⁷

Given the nearly impossible odds of a New Shipper obtaining sufficient capacity allocations through the lottery to establish a shipper history that confers rights to pro-rated capacity, the practical effect of Colonial's lottery proposal is to eliminate the lottery as a means of obtaining reasonable access to its system.⁸

⁷ November 18, 2015 New Shipper Group Protest, Gaske Affidavit at PP 10-11. *See* similar comments concerning the low probability of winning the lottery in November 18, 2015 Protest of Costco Wholesale Corporation at 7-8 (New Shipper must win the lottery 75 percent of the time (54 out of 72 cycles) to achieve the threshold to graduate to Regular Shipper status.)

⁸ New Shipper Group Protest at 15.

20. Colonial's proposed restrictions on shipper history transfers suffer from a similar defect, as they would essentially foreclose New Shippers or small Regular Shippers from using the secondary market as a means to obtain capacity on Colonial. Currently, Colonial allows shippers to transfer history without regard to the purpose of the transfer. Under Colonial's proposal, shippers would be permitted to transfer history only in connection with the sale of all of a business or a significant portion of a business that is associated with a history of at least 15,000 barrels per cycle. This proposal eliminates the option for shippers to freely obtain capacity on Colonial in the secondary market.⁹

21. The combined effect of the lottery and shipper history proposals is to essentially eliminate the only means through which a New Shipper could currently obtain access to the Colonial system.¹⁰

22. Furthermore, if accepted by the Commission, Colonial's proposal would create an unassailable right to space on its system for large Regular Shippers that is barred under the ICA as an impermissible undue preference or advantage. In fact, Colonial's proposal appears designed to prevent the decrease in the portion of constrained capacity allocated to large Regular Shippers at the expense of small Regular Shippers and New Shippers. Eliminating the transfer of shipping histories and dramatically curtailing the viability of the lottery system would enhance the position of the large Regular Shippers by preventing small Regular Shippers and New Shippers from obtaining capacity on

⁹ See, e.g., June 9, 2016 Motion to Withdraw Protest of Davinscroft, Inc. Davinscroft states that it started shipping on Colonial two years ago as a small New Shipper with plans to become a Regular Shipper. Davinscroft planned to sell and purchase history from other shippers on Colonial's system. Davinscroft states that purchasing history has been the established method of transforming many small New Shippers on Colonial and other domestic pipelines into Regular Shippers on those pipelines. Davinscroft believed that Colonial's proposed history transfer restrictions undermined the established method and directly impacted its efforts to become a Regular Shipper, and thus filed a protest. Now, as a result of Davinscroft successfully acquiring business history from other Colonial Shippers, Davinscroft moves to withdraw its protest and intervention.

¹⁰ The Commission recognizes that Tricon and Rockbriar filed a complaint regarding this issue in Docket No. OR16-17-000. Accordingly, substantive issues raised concerning various aspects of Colonial's existing history transfer practice, including requiring Colonial to submit its history transfer practice for Commission review, will be addressed in that proceeding. See *Colonial Pipeline Co.*, 155 FERC ¶ 61,187, at P 11 (2016).

Colonial as a means to increase their shipping histories and receive a larger share of Colonial's constrained total capacity. This creates an undue preference in favor of the large Regular Shippers.¹¹

23. While Colonial cites other, allegedly-similar tariff provisions accepted by the Commission in support of its proposal, we find the circumstances of this case are distinguishable. The instant proposal is different from other proposals approved by the Commission to address capacity allocation disputes because it has the effect of locking New Shippers into New Shipper status indefinitely.¹² In *Enbridge*,¹³ the Commission, in distinguishing *Platte*, explained that *Platte*'s proposed prorating policy "essentially constituted a permanent bar to new shippers becoming regular shippers because there was no prospect of *Platte* emerging from apportionment."¹⁴ The same situation is present here. There is nothing in the record here to suggest that Colonial will emerge from apportionment in the foreseeable future. Moreover, the Commission recognized in *Platte*

¹¹ Our concerns regarding the unduly preferential effect of Colonial's proposal are compounded by other aspects of the record. First, Colonial has characterized what is occurring on the system in a manner that suggests it wishes to provide preferential treatment to those shippers that move actual product and create barriers to marketers seeking access to Colonial's system. See November 23, 2015 Response of Colonial at 8. However, as York River Fuels suggests, "Colonial has not presented any data that events that it alleges are occurring have any adverse impact on either the cost or the efficiency of the pipeline." York River Fuels, LLC Protest at 8. Similarly, given that Colonial's system is fully subscribed and in pro-rationing, Colonial is presumably recovering its full revenue requirement, and is therefore not harmed by the sale of shipper histories. While Colonial may understandably seek to address concerns raised by its shippers, it may not do so in a manner that contravenes the ICA's requirements.

¹² See *Platte Pipe Line Co.*, 115 FERC ¶ 61,215, at P 32 (2006) (*Platte*) (establishing technical conference because the pipeline's proposal requiring that there be no prorating for at least one month during the rolling six-month historic period, in addition to the volume shipper requirement, appeared to have the effect of locking new shippers into new shipper status indefinitely). See also Colonial Post Technical Conference Comments, at 16 (Under the current lottery system adopted in 2013, only two New Shippers have graduated to Regular Shipper status by shipping product on the pipeline).

¹³ *Enbridge Pipelines (North Dakota) LLC*, 132 FERC ¶ 61,274 (2010) (*Enbridge*).

¹⁴ *Id.* P 30.

that a shipper's inability "to move volumes they wish to move" on a constrained pipeline, by itself, "does not violate the common carrier obligation to provide service."¹⁵ Here, New Shippers do not have the opportunity to move sufficient volumes on Colonial using its lottery system to allow them to become Regular Shippers. Such prohibition does not meet the ICA's requirement that the pipeline provide service upon reasonable request. In *Seaway*, the Commission did approve a lottery system over objections that the proposed lottery could significantly impair the ability of new shippers to become regular shippers.¹⁶ However, in *Seaway*, the factual circumstances indicated the lottery would reduce speculative nominations, and restrictions on history transfers were not in place. Here, the effect of both the proposed lottery changes and the history transfer restrictions work together to effectively preclude New Shippers from ascending to Regular Shipper status.¹⁷

24. Similarly, in both *Platte* and *Enbridge* ten percent of the capacity was set aside for new shippers as opposed to five percent here. Notably, Enbridge did eventually propose five percent capacity reservation for new shippers, which the Commission approved due to "the unique circumstances" on the pipeline.¹⁸ However, the Commission allowed this reduction because Enbridge committed to expanding its system and the various restrictive provisions on new shippers attaining regular shipper status were only temporary measures in response to an emergency situation that would be cured by the additional capacity Enbridge was creating through an expansion that was to be completed in the near future.¹⁹ Enbridge also committed that capacity in future expansions would be used to support capacity allocations to new shippers until they gained access to ten percent of the total capacity. Moreover, unlike Colonial's New Shippers, the new shippers on Enbridge were able to establish histories of shipments during the emergency period and to convert to regular shipper status at the end of the emergency period based on those histories. In contrast here, according to Colonial, only two entities have become New Shippers on Colonial via the lottery process and outside of a history transfer.²⁰ Consequently, none of these mitigating factors are present here. Instead, Colonial's

¹⁵ *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 46 (2006).

¹⁶ *See Seaway Crude Pipeline Co., LLC*, 143 FERC ¶ 61,036 (2013).

¹⁷ *See New Shipper Group Post Technical Comments* at n.22.

¹⁸ *Enbridge Pipeline (North Dakota) LLC*, 140 FERC ¶ 61,193, at P 22 (2012).

¹⁹ *Enbridge*, 132 FERC ¶ 61,274 at P 26.

²⁰ Colonial Post Technical Conference Comments at 16.

approach results in an indefinite period where entities cannot become New Shippers nor can they obtain shipper history that will move them to New Shipper status. This results in a quasi-permanent state of vesting incumbent, Regular Shippers' capacity rights, a situation that is antithetical to the "access upon reasonable request" requirement of the ICA.

25. Finally, we also note that Colonial bears some responsibility for the situation that it is attempting to remedy through its proposal. The 25,000 barrel rounding increment appears to be a major contributor to the creation of additional barrels and their subsequent use in creating additional shipping history and the trading of that shipping history. Although a number of commenters have asserted that the reduction or even outright elimination of the rounding increment would alleviate or eliminate most of the problems with allocation on Colonial, no prior effort has been made to make such a modification even though Colonial has been in allocation since 2012. In addition, Colonial has rejected calls for limiting its proposed changes simply to a reduction of the rounding increment from 25,000 barrels to 5,000 barrels, which could potentially address some of the concerns identified by Colonial. Furthermore, Colonial has not only allowed but in at least one instance encouraged the behavior that it now considers objectionable.²¹

Conclusion

26. Ultimately, under the ICA, common carriers have an obligation to offer service to all upon reasonable request. How to interpret that obligation rests with the Commission, based on its application of the ICA to the facts and record of a particular case. Although pipelines have reasonable leeway in crafting a proration policy based on history or some other approach, that leeway is not limitless but is bound by this statutory requirement. Colonial's proposal violates this obligation, and instead protects its large Regular Shippers from having their allocations of constrained capacity reduced, which is the unavoidable outcome on a common carrier pipeline where the demand for service exceeds the capacity of the pipeline system. Erecting barriers to New Shipper access to protect large Regular Shipper access and prevent this natural process is inconsistent with the statutory obligation to offer service to all upon reasonable request.

²¹ For example, according to Costco: "[i]n 2015 Costco applied for Regular Shipper status on Colonial Pipeline. After applying, Costco was informed that it first must become a New Shipper and meet certain requirements under Colonial's Lottery system in order to become a Regular Shipper. Colonial alternatively suggested that Costco could obtain Regular Shipper status by purchasing an existing Regular Shippers' history. However, because the current cost to purchase shipper history ranges in the hundreds of thousands of dollars, Costco did not find this suggestion practical." November 18, 2015 Protest of Costco Wholesale Corporation, Alnatour Affidavit at P 4.

27. The paradox for owners and long-time shippers on a capacity constrained common carrier products pipeline, such as Colonial, is that their own regular access to the pipeline must ultimately yield to an influx of new customers, who have the right under the ICA to some enduring and regular rights to capacity upon reasonable request. The solution could come with an increase in capacity, a lessening of demand, or more surgical adjustments to Colonial's procedures, but erecting insurmountable hurdles for New Shippers and impregnable protections for large Regular Shippers is not a permissible approach under the ICA. Colonial's proposals put forth in Docket No. IS16-61-000 are on their face inconsistent with Colonial's common carrier obligation, unjust and unreasonable, and create undue preferences or advantages for large Regular Shippers, and are accordingly rejected.

The Commission orders:

- (A) Colonial's proposed FERC Tariff No. 98.22.0 is rejected.
- (B) The various late interventions are granted as discussed above.
- (C) Sheetz, Inc.'s pleading is accepted as comments in support of Colonial's filing.
- (D) R. Gordon Gooch's petition is dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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