<u>Colonial Pipeline Company</u>
Order on Petition for Declaratory Order
89 FERC ¶61,095 (1999)
Order on Rehearing
95 FERC ¶61,355 (2001)

Colonial Pipeline Company (Colonial) sought a declaratory order regarding the impact of a proposed line addition that would shorten the existing route currently used to serve transportation between Houston, Texas and Nashville, Tennessee. Colonial asked the Commission to declare that: 1) cancellation of the pre-existing rates to Nashville would not be subject to challenge once the new line goes into service, 2) the indexed rates for the unchanged portions of the route would remain indexed and not subject to challenge, 3) the initial rates for the service to Huntsville (a new point) and Nashville (an existing point) may reflect a combination of the existing, indexed rate in use for the existing portion of the route and a cost-of-service rate for the new portion of the route, and 4) the cost-of-service component of the rate will not be subject to challenge except as provided for in the Commission's indexing regulations.

The Commission generally granted Colonial's request for a declaratory order. With particular regard to the third item, the Commission found that had Colonial proposed a new through rate to Nashville over the combination of existing and new lines (essentially, a new route), that would have to be justified as an initial rate. However, Colonial was proposing a combination of individual movements each with its own local rate. Thus, it was able to maintain its existing, grandfathered rates for the existing portions of the route and institute initial rates for the new portions. As to the fourth item, the Commission clarified that, once the initial rates are established, and assuming they remain indexed, then they will not be subject to challenge except as provided for in the Commission's indexing regulations.

On rehearing (95 FERC ¶61,355), the Commission affirmed that new pipeline facilities can constitute a new route, even if the destination point served by that new line was previously served via other portions of the pipeline.

COMM-OPINION-ORDER, 89 FERC ¶61,095, Colonial Pipeline Company, Docket No. OR99-16-000, (Oct. 27, 1999)

Colonial Pipeline Company, Docket No. OR99-16-000

[61,268]

[¶61,095]

Colonial Pipeline Company, Docket No. OR99-16-000

Order on Petition for Declaratory Order

(Issued October 27, 1999)

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On June 15, 1999, Colonial Pipeline Company (Colonial) filed a petition for declaratory order, seeking declarations from the Commission that the new rates proposed by Colonial for service from Houston, Texas to Nashville, Tennessee, through the combined use of its existing mainline and a new line to be constructed from Talladega, Alabama to Murfreesboro, Tennessee, with an intermediate point of delivery to Huntsville, Alabama, would be justified as more fully described in its petition. [1] More specifically, Colonial asks that the Commission order that the cancellation of Colonial's pre-existing rate for service to Nashville will not be subject to challenge when the new line goes into service; that its indexed rates from Houston and other origins to Birmingham, Alabama will not be subject to challenge as the result of the connection of the new line; that the Commission will accept the proposed initial joint rates for service to Huntsville and Nashville as proposed by Colonial; and that the cost of service component of the overall rates to Huntsville and Nashville will not be subject to challenge except as provided in the Commission's indexing regulations as applied to that particular segment.

Background

Colonial is a common carrier pipeline that transports petroleum products in interstate commerce. Colonial presently moves product from Houston to serve Nashville through two parallel stub lines, which originate at a connection with the Colonial mainline near Atlanta, Georgia, and run generally north and northwest from that connection point, through the Chattanooga, Tennessee area, to Nashville.

In recent years, Colonial states that its service to Nashville has been seriously constrained because of insufficient pipeline capacity to meet overall demand. Colonial states that nominations to Nashville have routinely exceeded available capacity, resulting in prorationing of shipper nominations. Colonial proposes to construct a new 20-inch diameter line, running approximately 169 miles in a generally northern direction from a point on the Colonial mainline near Talladega, Alabama, to a new terminal at Murfreesboro, Tennessee, just south of Nashville, at which point the new line would connect to the existing stub lines, with a new connection to serve the Huntsville, Alabama area. Colonial is petitioning the Commission for a declaratory order regarding the proposed rates for transportation service through this proposed new 20-inch line.

Requests to Intervene and Protests

Public notice of Colonial's petition was issued on June 18, 1999, with interventions and protests due by July 15, 1999. The due date subsequently was extended to August 5, 1999. Exxon Company, U.S.A. (Exxon), Motiva Enterprises LLC (Motiva), Marathon Ashland LLC (Marathon) and the Committee Against the Colonial Pipeline (MPACT) filed motions to intervene and protests to Colonial's request for declaratory order. State of Alabama Representatives Lowell Barron and Albert Hall each filed letters of concern respecting any tariff increase for Colonial, based on Colonial's efforts in the state to obtain tax-exempt status. A citizens association, MPACT, filed a motion to intervene and protest out of time, and no objection has been forthcoming to its being allowed to intervene Therefore, MPACT as well as Exxon, Motiva and Marathon are granted permission to intervene. The letters filed by the Alabama State representatives will be placed in the official record of this proceeding.

Discussion

Colonial seeks a Commission order declaring: (1) that the cancellation of Colonial's pre-existing rates to Nashville will not be subject to challenge when the new Talladega-to-Murfreesboro line goes into service; (2) that its indexed

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rates from Houston and other origins to Birmingham will not be subject to challenge as the result of the connection to the Talladega-to-Murfreesboro line; (3) that the Commission will accept the proposed initial joint rates for service to Huntsville and Nashville as proposed by Colonial; and (4) that the Talladega-to-Murfreesboro cost of service component of the overall rates to Huntsville and Nashville will not be subject to challenge except as provided in the Commission's indexing regulations as applied to that particular segment. We discuss each of these requests below.

1. Challenge to Cancellation of Pre-existing Rates to Nashville

Colonial proposes to establish both a new service to Huntsville through the Talladega-to-Murfreesboro line as well as a new expanded service to Nashville. Colonial proposes to cancel the existing tariff rates to Nashville, and to idle one of the existing 8-inch pipelines extending northward from the mainline interconnection at Atlanta Junction to Chattanooga, Tennessee, and to idle both pipelines presently connecting Chattanooga and Murfreesboro. Colonial seeks an order from the Commission declaring that idling of those facilities presently used to serve Nashville and cancellation of the existing rates for service to Nashville will not be subject to challenge.

The Interstate Commerce Act (ICA) [2] does not give the Commission jurisdiction over abandonments. [3] Transporters are generally free to cancel services at their will, subject to certain conditions. Although the Commission does not have abandonment authority over oil pipeline facilities, we have asserted jurisdiction over cancellation of services in limited circumstances. Motiva contends that the cancellation of service to Nashville is still subject to challenge, citing *Amoco*. [4] In *Amoco*, the transporter proposed to cancel service at certain origin points along its mainline pipeline, while keeping the mainline pipeline in service for service downstream of the cancellation points. The Commission indicated there that it was not devoid of jurisdiction in those circumstances, since the mainline pipeline would still be in service. The Commission stated that such cancellation would affect throughput on its system, which in turn would affect Amoco's system-wide cost of service, and thereby may affect its rates. The Commission stated that it therefore had jurisdiction under Section 15(7) of the ICA, since the proposed cancellations would in fact affect rates.

However, *Amoco* involved cancellation of points of origin along a pipeline that would continue to be in service after the cancellations were made, for service to points downstream of the canceled points. That is not the case here. Rather, Colonial's petition indicates that it will idle certain of its facilities, which we take to mean that those facilities which had been used to transport petroleum products to Nashville will be abandoned. The idled facilities include all the pipelines extending from Chattanooga to Murfreesboro, thereby making continued service to Nashville over the pre-existing route impossible. Thus, cancellation of the pre-existing rate schedule for service to

Nashville would appear to be appropriate in these circumstances.

2. Rates from Houston to Birmingham

Colonial presently has rates in effect for service from Houston and other origin points to Birmingham. It does not propose to alter these rates. Colonial proposes to use these rates in combination with new rates to Huntsville and Nashville that will be based on the cost of service of the new Talladega-to-Murfreesboro line. It seeks a determination that the pre-existing rates for the transportation from Houston and other origin points to Birmingham will not be subject to challenge as the result of the connection to the Talladega-to-Murfreesboro line.

The rates currently in existence along Colonial's mainline from Houston and other points of origin to Birmingham are "grandfathered" pursuant to the Energy Policy Act of 1992 (EPAct) and, thus, are deemed to be just and reasonable. [5] The mere connection to additional downstream facilities, *i.e.* the proposed Talladega-to-Murfreesboro line, would not negate the grandfathered status of the rates for movements from Houston and the other points to Birmingham.

3. Proposed Initial Rates for Service to Huntsville and Nashville

Colonial proposes to construct a new pipeline extending from Talladega on its mainline just east of Birmingham in a northerly direction through Huntsville, Alabama to Murfreesboro, Tennessee, which is on its existing line east of Nashville. Colonial proposes to charge rates for its service to Huntsville and to Nashville consisting of a combination of its existing grandfathered rate from Houston to Birmingham and a rate for service from Birmingham to Huntsville and Nashville based on the cost of

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service of the new line extending from Talladega to Murfreesboro. Colonial states that instead of providing the service itself in its entirety, it may form a sister company to own the new facilities to be constructed and provide a joint service with the new company, but that it has not committed to do so. The primary rate question presented, thus, is whether, given Colonial's proposal to construct a new line from its mainline to its existing line leading to Nashville, Colonial may charge a combined rate composed of its existing rate from Houston to Birmingham and a new cost-of-service based rate on the proposed Talladega-to-Murfreesboro pipeline for service to Huntsville and to Nashville. Colonial seeks an order which will state that the Commission will accept the proposed rates for service to Huntsville and Nashville as set forth in its petition.

Protestors contend that what Colonial is proposing is, in effect, a rate increase for its existing service from Houston to Nashville, which Colonial must justify based on a cost of service showing for the entire Houston to Nashville route. Colonial currently charges about 82 cents per barrel for service from Houston and other origin points to Nashville through its mainline extending to Atlanta, Georgia, and thence through lines through Chattanooga, Tennessee to Nashville, some of which will now be abandoned, eliminating the availability of the 82-cent through service from Houston to Nashville.

The Commission's regulations provide that a pipeline's rates apply to specific routes that must be stated in a pipeline's tariff so that the actual routes may be ascertained. [6] The 82-cent through rate that Colonial currently charges for Houston to Nashville service applies to the existing route from Houston to Nashville through Atlanta. When that service is cancelled, if Colonial were to propose new through rates from Houston to Huntsville and Nashville over the new Talladega-to-Murfreesboro line, those rates would apply to that specific Houston to Huntsville route and would have to be established and justified as initial rates under the Commission's regulations. [7]

Colonial, however, is not proposing through rates from Houston to Huntsville and Nashville. Rather, it is proposing a combination of individual movements using local rates over existing and new routes to provide service from Houston to Huntsville and Nashville. Each of the routes that Colonial would combine to provide this service will have specific local rates that apply to that route and to the movements over that route. Thus, Colonial by combining individual movements over the existing route from Houston to Birmingham with individual movements over the new route from Birmingham to Nashville, will be able to use grandfathered rates for Houston to Birmingham and initial rates for Birmingham to Huntsville and Nashville. The rates for movements from Houston to Huntsville and Nashville thus will be the sum of the rates for these individual movements. If Colonial forms a new company to own the new Talladega-to-Murfreesboro line, Colonial and the new company will be able to provide service from Houston to Huntsville and Nashville using joint rates offered in a joint tariff filed by either Colonial or the new company.

Colonial is proposing a levelized three-year rate for its initial Talladega-to-Murfreesboro-based cost of service rate. Colonial states that under a conventional year-by-year calculation, the rate in the first year or two of service would be relatively high because volumes typically are low at first, but build up over time. Rather than subject shippers to what Colonial characterizes as "front-end shock," Colonial proposes to base its initial rates on projected costs for the new line and throughput over the first three years of operation, with a commitment not to seek any higher rates for the service over that three-year period, except as permitted by indexing. Colonial also states that the levelized rate is designed to compensate for initial forgone revenue by allowing slightly higher revenues than would otherwise occur in subsequent years. Colonial requests assurance that its three-year levelized rate approach will be accepted when it files to establish its initial rates. The Commission in the past has approved the concept of levelized rates. [8] Thus, Colonial's proposal for three-year levelized rates is acceptable.

We approve here only the methodologies for charging rates and establishing initial rates as discussed above. We do not express any view on the level of the cost of service rates listed by Colonial in its application. Colonial's actual cost of service will not be established until after construction of the Talladega-to-Murfreesboro line is completed. The appropriate cost of service, thus, must be determined when Colonial files to establish initial rates based on that cost of service.

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4. Challenge to the Talladega-to-Murfreesboro Cost of Service

Colonial seeks an order declaring that the Talladega-to-Murfreesboro cost of service component of the rates to Huntsville and Nashville will not be subject to challenge except as provided in the Commission's indexing regulations as applied to that particular segment. As stated earlier, the Commission's regulations require that initial rates be cost-justified, or be a rate agreed to by a non-affiliated shipper. [9] Once established, however, initial rates can be indexed. [10] The Commission's regulations also provide that challenges to indexed rates must allege that the established rates violate applicable ceiling levels or that proposed rate increases (or decreases) are so substantially in excess of actual cost increases (or decreases) that the rates are unjust and unreasonable. [11] Thus, under the Commission's regulations, if Colonial's initial rates based on the Talladega-to-Murfreesboro line's cost of service remain indexed, they can be challenged only on these grounds.

The Commission orders:

The petition for declaratory order filed by Colonial on June 15, 1999, is granted as discussed in the body of this order.

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-- Footnotes --

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1 Appendix A is a map of the Colonial system as it pertains to this order.

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2 49 App. U.S.C. §1 (1994).

3 *See ARCO Pipeline Company*, 55 FERC ¶61,420 (1991); *Texaco Pipeline Inc.*, 58 FERC ¶62,051 (1992).

4 *Amoco Pipeline Company*, 83 FERC ¶61,156 (1998).

5 42 U.S.C. §7172 note (1994).

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6 18 C.F.R. §341.3 (b)(8) (1999).

7 Section 342.2 of the Commission's regulations, 18 C.F.R. §342.2 (1999), provides that a carrier must establish an initial rate for new service by a cost of service filing or by an unprotested filing agreed to by at least one non-affiliated person who intends to use the service.

8 *See*, *Express Pipeline Partnership*, 76 FERC ¶61,245 (1996), and *Point Arguello Pipe Line Company*, 55 FERC ¶61,329 (1991).

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9 18 C.F.R. §342.3 (1999).

10 18 C.F.R. §342.4 (1999).

11 18 C.F.R. §343.2 (c)(1) (1999).