

95 FERC ¶ 61,355
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Colonial Pipeline Company

Docket No. OR99-16-001

ORDER ON REHEARING

(Issued June 4, 2001)

On October 27, 1999, the Commission issued an order on petition for declaratory order, granting a petition filed by Colonial Pipeline Company (Colonial) on June 15, 1999 (October 27 order).¹ Thereafter, requests for rehearing were filed by Exxon Company, U.S.A. (Exxon) and Motiva Enterprises LLC (Motiva). For the reasons appearing below, the requests for rehearing are denied.

Background

Colonial's petition for declaratory order sought declarations from the Commission that certain new rates proposed by Colonial for service from the Houston, Texas area 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. Colonial requested 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.

¹Colonial Pipeline Company, 89 FERC ¶ 61,095 (1999), appeal pending sub nom. Marathon Ashland Petroleum LLC v. FERC, No. 99-1484 (D.C. Cir.).

In its October 27 order, the Commission determined that, under the circumstances presented by Colonial, cancellation of the pre-existing rate schedule for service to Nashville would appear to be appropriate. We found that the pre-existing rates for service from Houston and other points of origin to Birmingham would not be affected by the construction of the pipeline proposed by Colonial.² We further approved Colonial's proposed methodology for charging rates and establishing initial rates for service to Huntsville and Nashville, consisting of the existing grandfathered rate from Houston to Birmingham and the applicable cost-of-service rate of the new line extending from Talladega to Huntsville and from Talladega to Murfreesboro, respectively. Finally, we determined that, if Colonial's initial rates based on the cost of service of the Talladega-to-Murfreesboro line remain indexed, they can be challenged only under the grounds stated in the Commission's regulations.

Requests for rehearing of the October 27 order were filed by Exxon and Motiva.

Discussion

1. Colonial's New Route

Most of the arguments proffered by Motiva and Exxon in their requests for rehearing relate to whether the Talladega to Murfreesboro line proposed to be constructed by Colonial is actually a new route.³ In the October 27 order, the Commission found that this line provided a different route for which a specific rate would be established. As stated in that order:

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. 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 canceled, if Colonial were to propose new through rates from Houston to Huntsville and Nashville over the new Talladega-to-Murfreesboro line, those rates

²The rates currently in existence along its mainline from Houston and other points of origin to Birmingham are "grandfathered" pursuant to the Energy Policy Act of 1992 (EPA) (42 U.S.C. § 7172 note (1994)).

³See Motiva's Request for Rehearing at 13; Exxon's Request for Rehearing at 21.

would have to be established and justified as initial rates under the Commission's regulations. [Footnotes omitted] ⁴

Motiva and Exxon argue that it does not matter that this is a new route on a new line, and that the crucial fact is that Colonial will continue to serve some of the same destination points from the same origin points. The Commission disagrees. What Colonial proposes is a new line to be constructed from Talladega, a new point on the existing mainline, through and serving a point at Huntsville not previously served on the old line segment, to a new intersection at Murfreesboro on the previous branch line ultimately serving Nashville. This is a new route over which service has never before been provided by Colonial. Neither Exxon nor Motiva provide any rationale for finding otherwise. They merely argue that, since oil will still be transported from the Houston area and delivered to the Nashville area, the route does not matter and the rate cannot reflect the construction of facilities for a new route. Both Exxon and Motiva disregard the facts that transportation will be over a newly constructed pipeline route, and that the Commission's regulations require that rates be established that are specifically applicable to that transportation over that route. ⁵ Their arguments therefore do not support a conclusion other than that reached by the Commission in the October 27 order.

2. Colonial's Rate Methodology

The parties seeking rehearing allege that Colonial will be charging higher rates for its service to Nashville and that the Commission should address cost and rate issues now. At the outset, it should be noted that the Commission is here responding to a petition for a declaratory order that the rate methodology proposed by Colonial is acceptable. As stated in the October 27 order:

We approve here only the methodology for establishing initial rates as discussed above. We do not express any view on the adequacy of the level of the cost of service rates listed by Colonial in its application. The appropriate cost of service will be determined when and if Colonial files to establish initial rates for its proposed services. ⁶

⁴89 FERC at 61,270.

⁵See 18 C.F.R. § 341.3(b)(8): "*Routing*. Routing over which the rates apply must be stated so that the actual routes may be ascertained...."

⁶89 FERC at 61,270.

The Commission is not here determining cost or rate levels for the new route proposed by Colonial. Issues of cost or rate levels that parties seek to raise on rehearing of the October 27 order should be considered at a later time, perhaps when Colonial seeks to establish initial rates for its proposed new route.

Motiva and Exxon, citing Order Nos. 561 and 561-A,⁷ argue that the Commission, in approving a bifurcated rate methodology that includes both grandfathered and cost-justified elements, violates its own oil pipeline rate-changing regulations, and effectively authorizes Colonial to improperly avoid cost-of-service review for the Houston-to-Birmingham portion of its Houston-to-Nashville haul. This is not the case. Under the EAct, Colonial's rates for transportation from Houston to Birmingham are grandfathered. Colonial does not propose to change these rates. The only other element of Colonial's proposal is for a new route, and only that element requires an initial rate that must be justified and applied to that new route. There is no independent reason to require Colonial to justify the existing grandfathered rates. Colonial is not proposing to change its grandfathered rates. Colonial is simply proposing adding a route requiring an initial rate. Since Colonial is not proposing to change its rates, our rate-changing regulations are not germane to this new route and rate.

Exxon contends that the Commission must examine the entire rate from the Houston area to Nashville on a cost-of-service basis, instead of the composite grandfathered and cost-of-service approach approved in the October 27 order. While this is one method to accomplish the task of determining just and reasonable rates, we view this as not required by statute. Congress in the EAct established specified rates to be just and reasonable and provided those rates with additional protections.⁸ To review all of the individual movements made by Colonial to arrive at a proper rate when one which has been deemed to be just and reasonable already exists, is unnecessary. The October 27 order properly found the rates from Houston to Birmingham to fall under the EAct "grandfathered" status. To modify that leg of the combined rate would require a showing of changed circumstances. While there were allegations as to possible changes

⁷Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, III FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30,985 (1993); Order on Rehearing, Order No. 561-A, III FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,000 (1994) affirmed, Association of Oil Pipelines v. FERC, 83 F.3d 1424 (D.C. Cir. 1996).

⁸Section 1803 (b) of EAct generally provides that no person may file a complaint under section 13 of the ICA against a rate deemed to be just and reasonable by the EAct unless specific changed circumstances can be shown.

in the volumes over the line, there were no direct facts presented. This issue can be revisited at a later time via a complaint if the situation warrants.

Exxon and Motiva question the appropriateness of combining two individual rates (one from Houston to Birmingham and the other from Talladega to Nashville) to arrive at a rate for the movement from Houston to Nashville. There is nothing in the ICA, however, which requires such a through rate to be published or established under a unitary methodology.⁹

Motiva argues that the Commission's action in allowing the grandfathered rate for one line segment and the cost of service justified rate for the second line segment is contrary to its statements in Order Nos. 561 and 561-A. Motiva quotes the Commission as stating that:

To repeat, the cost-of-service, settlement, and market-based rate methodologies are alternatives to the generally applicable and required indexing approach. They may only be utilized to change rates when certain defined circumstances, as explained above, are shown by the pipeline to exist. The Commission's action in the final rule ameliorates the concern of Alaska, which objects to allowing the pipelines to "mix and match" rate methodologies. Rather than allowing total discretion by the pipelines to pick and choose among the alternate methodologies, the Commission's final rule prescribes strict limitations under which the alternative methodologies may be used.¹⁰

The above statement applies to proposed rate changes. Here, as discussed at the outset, we have a new route and an initial rate applicable to that route. The regulations permit only two methods for establishing initial rates. They are a cost-of-service

⁹Section 15(3) of the ICA permits the Commission to establish through and joint rates whenever it is deemed to be necessary or desirable in the public interest but does not require it to be done. Given the resultant availability of service open to the shippers, we do not see the public interest being served by our forced establishment of through rates at this time.

¹⁰Order No. 561 at 30,947.

justification, as provided by Colonial in the instant case, or an affidavit stating the agreement of at least one non-affiliated shipper.¹¹ Colonial has met its burden.

3. Colonial's Cancellation of its Existing Service

Exxon argues that the Commission has misconstrued its jurisdiction under the ICA to approve cancellation of Colonial's existing tariff. Exxon recognizes that the Commission does not have abandonment authority under the ICA, but argues that the Commission should have required Colonial to demonstrate whether cancellation of the existing service would be in the public interest, under Section 15(3) of the ICA, rather than to approve the cancellation simply because Colonial will take the facilities out of service for its present service to Nashville.

The crucial fact is that the existing line will be completely abandoned when the new line is built and service is ready to commence over the new route. Once abandoned, there will be no service to Nashville over those facilities to which the existing rate schedule applies.¹² Exxon recognizes that the Commission does not have traditional abandonment authority over service of oil pipelines. The Commission stated as much in the October 27 order, citing the limited nature of its jurisdiction.¹³ We are not here approving the cancellation of Colonial's existing rate schedule. That will be done only at such time that Colonial has abandoned its existing service and idled its existing facilities as it proposes. If service is not abandoned as Colonial proposes, Exxon will have an opportunity to raise this issue at that time.

¹¹18 C.F.R. § 342.2 (2000).

¹²Section 15(3) of the ICA provides that the carrier proposing to cancel a tariff must show consistency with the public interest when there is a dispute over the cancellation where all the carriers, not shippers, making the movement under the tariff do not concur in the cancellation or when the Commission questions the attempted cancellation for reasons of undue discrimination. That is not the situation here, as it was in *Amoco Pipeline Company*, 83 FERC ¶ 61,156 (1998), which was discussed in the October 27 order. In that case, the Commission's asserted jurisdiction over Amoco's proposal to cancel service over certain, but not all, points on its Big Horn System, because Amoco's proposal was not a complete abandonment of service. Here, Colonial's abandonment of service over its existing facilities to Nashville is complete.

¹³89 FERC at 61,269.

On February 14, 2000, Motiva filed a motion to lodge new factual material concerning a press release indicating that Colonial proposed to expand its proposed distillate line from Houston to Greensboro, North Carolina by 144,000 barrels per day. Motiva contends that this increased capacity is approximately the same as the initial throughput proposed by Colonial for the first three years of service by its Talladega-to-Murfreesboro pipeline, and that this indicates an intent on the part of Colonial to utilize the system freed up by its construction of the new pipeline. On February 29, 2000, Colonial answered the motion of Motiva, disputing its accuracy in the effect of the mainline expansion on the Nashville project and on the "aspersions it casts on Colonial's previous statements." (Answer, p. 2) Both the motion and the answer concern matters not at issue in this proceeding, but which may be raised when Colonial files to cancel the existing rate schedule for service to Nashville. Therefore, Motiva's motion to lodge new factual material in this declaratory order proceeding is denied.

The Commission orders:

The requests for rehearing filed by Exxon and Motiva are denied.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.