

171 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tricon Energy Ltd. and Rockbriar Partners Inc.

Docket No. OR16-17-000

v.

Colonial Pipeline Company

ORDER ON COMPLAINT AND TERMINATING INVESTIGATION

(Issued April 28, 2020)

1. On May 9, 2016, Tricon Energy Ltd. and Rockbriar Partners Inc. (Complainants) filed a complaint (Complaint) against Colonial Pipeline Company (Colonial), alleging that Colonial's prorationing policy<sup>1</sup> unlawfully denied service for a 14-month period to New Shippers that transferred their shipper history (Lockout Policy) and that Colonial could not lawfully administer the Lockout Policy without including it in its tariff. In September 2016, the Commission initiated an investigation into the Complaint as well as a broader investigation into Colonial's prorationing policies.<sup>2</sup> Here, we deny in part and grant in part the Complaint. As discussed below, we find that Colonial's Lockout Policy is just and reasonable and not unduly discriminatory, but we also find that Colonial must revise its tariff to incorporate this policy. We also direct Colonial to incorporate by reference the relevant portions of its shipper manual pertaining to its prorationing policy<sup>3</sup> or to include its entire prorationing policy in its tariff. Finally, we terminate the broader investigation initiated by the September 2016 Order into Colonial's prorationing policies.

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<sup>1</sup> Prorationing refers to the process an oil pipeline uses to allocate capacity among nominating shippers during nominating periods when the volume of shipper nominations exceeds the pipeline's available capacity.

<sup>2</sup> *Tricon Energy Ltd. v. Colonial Pipeline Co.*, 156 FERC ¶ 61,176 (2016) (September 2016 Order).

<sup>3</sup> See *Amoco Pipeline Co.*, 82 FERC ¶ 61,108, at 61,386 (1998) (citing *Total Petroleum, Inc. v. Citgo Petroleum Pipeline*, 76 FERC ¶ 61,164 (1996) (*Total Petroleum, Inc.*)).

## I. Background

2. Colonial owns and operates a common carrier refined products pipeline system that extends from Houston, Texas, to Linden, New Jersey, in the New York Harbor Area. Colonial transports various grades of gasoline and distillates, such as jet fuel and heating oil. Colonial operates a batched pipeline system where different refined products are transported in separate batches at different times rather than in a common or commingled stream.

3. As a common carrier oil pipeline Colonial is required “to provide and furnish transportation upon reasonable request therefor” pursuant to section 1(4) of the Interstate Commerce Act (ICA).<sup>4</sup> Thus, when nominations exceed available capacity the pipeline is required to allocate capacity to all requesting shippers, subject to certain limitations. Pipelines allocate the scarce capacity through the implementation of their prorationing policies. Colonial uses a historical allocation method as opposed to a pro rata method under which capacity would be allocated equally based on nominations. On Colonial, a shipper’s history or historical allocation is based on its average shipment by volume for a five-day shipment cycle calculated over a rolling base period of the prior 12 months. Colonial’s prorationing policy allows shippers to direct the transfer of their shipper history to another shipper. The primary purpose of accommodating history transfers is to allow a shipper to convey its shipping rights to a buyer of the shipper’s related business or assets. All shippers accumulate history whenever they ship, but history is only directly beneficial to a New Shipper if it manages to accumulate enough history to graduate to Regular-Shipper status.

4. Colonial’s prorationing policy is set forth at Item 31 of its currently effective tariff.<sup>5</sup> According to that policy, shippers on Colonial’s pipeline are divided into two groups: Regular Shippers and New Shippers. Regular Shippers on Colonial are shippers who have shipped a specified threshold volume level per nomination cycle over the prior 12-month period while New Shippers are those that have not met those requirements. A New Shipper becomes a Regular Shipper when it meets the threshold volume level.<sup>6</sup> When Colonial’s prorationing policy is in effect, Regular Shippers are allocated capacity based upon their shipping history while New Shippers are each allocated a minimum batch volume out of the capacity reserved for New Shippers, which is 5% on larger pipeline segments and 10% on smaller pipeline segments. If total New Shipper

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<sup>4</sup> 49 U.S.C. App. § 1(4) (1988).

<sup>5</sup> Colonial Tariff No. FERC 98.37.0.

<sup>6</sup> Colonial’s May 16, 2016 Response to Protests in Docket No. IS16-259-000 at 2-3.

nominations exceed the capacity available to New Shippers, a computer-generated lottery is used to allocate New Shipper minimum batch volumes.

5. Near the end of 2015, Colonial had been in capacity allocation or prorationing for nearly three years as the demand for capacity on Colonial's system exceeded available capacity. From 2013 to 2015, the number of shippers on Colonial increased by about 50%.<sup>7</sup> As a consequence, shippers sought various ways to obtain and trade capacity on Colonial to satisfy the requirements of their respective businesses. Some shippers sold or sought capacity to take advantage of economic opportunities in secondary markets that developed because of the demand for capacity on Colonial's system.<sup>8</sup> One of these markets involved the sale of shipping history on Colonial that was accomplished through Colonial's history transfer process. During this time period, Colonial determined that a growing number of shippers were taking advantage of certain unintended loopholes in its prorationing policy.<sup>9</sup> Upon further analysis, Colonial concluded that a combination of unrestricted history trading and its rounding and minimum tender provisions<sup>10</sup> were being used to allow shippers to obtain access to a greater amount of space on the pipeline than a shipper would have been entitled to under Colonial's capacity allocation program, thus undermining the overall integrity of the allocation process.<sup>11</sup>

6. Colonial explains that when a shipper transfers its history, it takes 14 months to complete the transfer to the shipper receiving the history. Colonial states that during the 14-month transfer period, its Lockout Policy provides that the transferring shipper has Regular Shipper status and is not eligible for New Shipper status and participation in the lottery on the segments to which the history transfer applies.<sup>12</sup>

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<sup>7</sup> Colonial's November 3, 2015 Transmittal Letter in Docket No. IS16-61-000 at 2. Colonial stated that the number of shippers significantly increased from approximately 140 in 2013 to over 210 in 2015.

<sup>8</sup> *Id.* at 2 & nn.4-6.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> At the time, the minimum size of a shipment of petroleum products was 25,000 barrels and shipper history additions were rounded to the nearest 25,000 barrels.

<sup>11</sup> Colonial's November 3, 2015 Transmittal Letter in Docket No. IS16-61-000 at 1-4 and Colonial's November 23, 2015 Response in Docket No. IS16-61-000 at 4 and 15-16.

<sup>12</sup> Colonial's April 22, 2016 Transmittal Letter in Docket No. IS16-259-000 at 1.

7. Colonial states that its consistent practice is to treat a shipper that is transferring its history to another party as ineligible for New Shipper status until the transfer is fully completed. Colonial states that a shipper's history is based on its movements on the pipeline during the "Base Period," that is, the 12 months ending one month prior to the month of anticipated segment capacity constraint. As a result, according to Colonial, the process of transferring 100% of a shipper's history to another party takes 14 months to complete from the month Colonial receives the request. Colonial states that the transferring shipper's history is automatically transferred each month to the receiving shipper until the receiving shipper has received the full 12-month history. During this "lockout period" the shipper that is transferring its history is ineligible for New Shipper status on the segments to which the history transfer applies. Colonial notes that this provision does not prevent a shipper from having New Shipper status on segments for which it is not transferring its history.<sup>13</sup>

8. Colonial presents the following example: assume a Regular Shipper requests a transfer of all of its history on Line 1 to a third party. During the ensuing 14 months it takes for the transfer to be complete, any Line 1 history accumulated as a result of the volumes shipped by the Regular Shipper on Line 1 would be automatically transferred to the receiving shipper. Therefore, if the Regular Shipper were given New Shipper status on Line 1 during this period, any volumes awarded through the lottery and shipped would be automatically transferred to the receiving shipper, in effect giving the receiving shipper access to both Regular Shipper and New Shipper capacity. Colonial states that this would violate Colonial's obligation under its tariff to reserve a certain amount of the pipeline's capacity exclusively for New Shippers.<sup>14</sup> However, once the history has been fully transferred over, the transferring shipper (who now has zero history) may request New Shipper status on the applicable segment, which in this example is Line 1.<sup>15</sup>

9. Colonial states that consistent with industry practice, its currently effective tariff does not set out the particulars of how history transfers will be managed.<sup>16</sup> Further, it contends that pipelines are not required to publish every detail of their operations and

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<sup>13</sup> *Id.* at 1-2; *see also* Colonial's May 16, 2016 Response to Protests in Docket No. IS16-259-000.

<sup>14</sup> *See* definition of "New Shipper Capacity" at Item 31(b) of Colonial Tariff No. FERC 98.37.0.

<sup>15</sup> Colonial's April 22, 2016 Transmittal Letter in Docket No. IS16-259-000 at 1-2.

<sup>16</sup> Colonial's May 16, 2016 Response to Protests in Docket No. IS16-259-000 at 3.

practices in their tariff.<sup>17</sup> Colonial states that its proposed tariff change, discussed below, was intended to memorialize Colonial's existing practice in order to provide greater clarity and transparency to shippers. Colonial contends that its existing practice, to treat a shipper in the process of transferring its history as a Regular Shipper until the transfer is complete, is a just and reasonable means to ensure that the capacity set aside for New Shippers is preserved. Further, it argues that its history transfer policy is also non-discriminatory because it applies equally to any shipper who elects to transfer its history.<sup>18</sup>

## II. Procedural History

10. This Complaint proceeding arose from a tariff filing on April 22, 2016 in Docket No. IS16-259-000 in which Colonial proposed to amend the definition of New Shipper and Regular Shipper to provide that “[d]uring the pendency of a history transfer, a shipper shall have Regular Shipper status.” In response, the Complainants filed both a protest and a complaint. The Complainants asserted that Colonial's proposed revision locks New Shippers out of Colonial's common carrier pipeline for 14 months. They stated that these shippers are precluded from entering the New Shipper lottery for 14 months following a transfer of the shipper's history.

11. On May 19, 2016, the Commission issued an order rejecting Colonial's filing in Docket No. IS16-259-000, finding that Colonial attempted to memorialize an existing practice that is not in the tariff, had no references in the tariff and had not been subject to review by the Commission or shippers, contrary to existing Commission precedent.<sup>19</sup> The Commission recognized that the Complainants filed a complaint along with their protest to Colonial's proposed tariff revision in Docket No. IS16-259-000, and established a separate docket number, Docket No. OR16-17-000, to address this Complaint. The Commission stated that it would address in the Complaint proceeding the substantive issues raised concerning various aspects of Colonial's history transfer

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<sup>17</sup> *Id.* (citing *ARCO Alaska, Inc. v FERC*, 89 F.3d 878, 886 (D.C. Cir. 1996); *Amoco Pipeline Co.*, 82 FERC ¶ 61,108 at 61,386).

<sup>18</sup> *Id.*

<sup>19</sup> *Colonial Pipeline Co.*, 155 FERC ¶ 61,187, at P 10 (2016) (May 2016 Order), *order granting clarification*, 156 FERC ¶ 61,175 (2016) (Order on Tariff Filing). In the order granting clarification, the Commission held that Colonial was not required to cease its practice of making a shipper that has transferred its history ineligible to be a New Shipper during the period when the transfer is pending and that the Commission did not in the May 2016 Order rule on the merits of Colonial's history transfer practice.

practice, including requiring Colonial to submit its history transfer practice for Commission review.

12. On May 31, 2016, Colonial filed an answer to the Complaint contending that the Commission has long recognized that there are administrative services provided by oil pipeline companies that do not constitute transportation service under the ICA and therefore do not need to be included in the published tariff, particularly services that are not essential to the provision of transportation service.<sup>20</sup> Colonial also argued that the specific practice that the Complainants challenge is reasonable, non-discriminatory and not otherwise inconsistent with the ICA.<sup>21</sup>

13. On July 8, 2016, Flint Hills Resources, L.P. (Flint Hills) filed a motion to intervene out-of-time and protest. Flint Hills argued that Colonial's treatment of shipments originating at Moundville, Alabama is unduly discriminatory because shipments originating at Moundville are excluded from the calculation of a shipper's history in Colonial's prorationing policy.<sup>22</sup> Moreover, Flint Hills stated that these practices are not included in Colonial's tariff.

14. On July 28, 2016, in response to Flint Hills, Colonial stated that the capacity allocated to a shipper in prorationing<sup>23</sup> is based on the volumes the shipper shipped on the applicable segment in the prior 12 months. Colonial confirmed that it excludes barrels that originated at Moundville in this calculation and explained that this is because an operational constraint point occurs at Collins, which is just upstream from Moundville. Thus, Colonial explained that barrels originating at Moundville do not pass through the Collins "choke point,"<sup>24</sup> and, thus those barrels are not counted as historical shipments

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<sup>20</sup> Colonial's May 31, 2016 Answer in Docket No. OR16-17-000 at 2-3.

<sup>21</sup> *Id.* at 27-30.

<sup>22</sup> Flint Hills' Filing at 3, 8. Lines 1 and 2 are the main segments of Colonial, the parallel lines that carry through traffic from Gulf Coast origins to the New York Harbor ultimate destination. Each is a distinct segment for prorationing purposes. Flint Hills' objection pertains only to prorationing on the Line 1 and Line 2 segments, and Colonial's prorationing provisions specific to Moundville pertain only to the Line 1 and Line 2 segments.

<sup>23</sup> Calculated Cycle Historical Allocation (CCHA). Colonial's September 2016 Shipper Manual § 6.2.2.

<sup>24</sup> Colonial July 28, 2016 Answer at 4 n.3. The choke point (generally Collins, Mississippi) is the point at which nominated volumes exceed capacity.

through Collins.<sup>25</sup> Moreover, Colonial stated that shippers at Moundville (the only origin point downstream of the operational constraint at Collins) can inject barrels on Colonial's system regardless of the prorationing calculation that applies to shippers at points upstream. In like manner, Colonial stated that barrels originating at Moundville are not considered when assessing a shipper's liability for the Capacity Allocation fee because those shipments are not consistent with a nomination through the Collins choke point.<sup>26</sup> Colonial stated that although these policies are not in the tariff, they are described in Colonial's Shipper Manual at Section 2.6.3.

15. On September 13, 2016, the Commission issued an order stating that the Complaint against Colonial, Flint Hills' filing, as well as the numerous pleadings in Docket Nos. IS16-61-000 and IS16-259-000, raised issues that warranted further investigation by the Commission.<sup>27</sup> Accordingly, the Commission initiated an investigation and requested from Colonial and other parties additional information concerning the allocation of capacity on Colonial's system. The Commission stated that it was investigating the allocation of capacity on Colonial's system, including but not limited to history transfers, to determine whether that program and any related policy or program is consistent with the ICA.<sup>28</sup> The Commission also sought information necessary for determining whether, and to what extent, Colonial's policies on the allocation of capacity are jurisdictional, and to what extent they must be set forth in Colonial's tariffs.<sup>29</sup>

16. A number of parties submitted filings responding to the questions set forth in the Commission's data request in the September 2016 Order.<sup>30</sup> Colonial provided detailed responses to the questions and included, among other things, its shipper manual and other documents concerning capacity allocation and history transfer on its system. In their responses Flint Hills, Tricon, and Rockbriar indicated that they did not have relevant information or that Colonial possessed the requested information. A number of parties

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<sup>25</sup> *Id.* at 4.

<sup>26</sup> A Capacity Allocation fee is charged when a shipper's final ticketed volume is less than 95% of its final nomination in a given cycle.

<sup>27</sup> September 2016 Order, 156 FERC ¶ 61,176 at P 24.

<sup>28</sup> *Id.* P 26.

<sup>29</sup> *Id.*

<sup>30</sup> Colonial, Tricon and Rockbriar (jointly), and Flint Hills.

also filed comments or answers in response to the information provided by Colonial.<sup>31</sup> Concept Petroleum Marketing LLC and Emert Enterprises, LLC commented on creditworthiness issues, which are not pertinent to this proceeding. Costco Wholesale Corporation stated that the Commission should find that Colonial's tariff violates the ICA because it does not provide reasonable access to New Shippers and allows Regular Shippers to achieve allocations of capacity that exceed their shipper history, thereby facilitating the proliferation of secondary markets that provide profits to some Colonial shippers to the detriment of other shippers.

17. On September 23, 2019, the Commission issued an Order Requesting Information in order to update the record in this proceeding.<sup>32</sup> Further, the Commission invited responses from other parties with relevant information and provided for comments or answers to Colonial's responses. Colonial filed its response to this second data request on October 23, 2019. The data provided by Colonial shows a significant decrease in the number of history transfers after changes in the commodities market and the end of the period of prolonged prorating on Colonial by 2017.<sup>33</sup> Colonial also submitted data demonstrating that New Shippers have been able to obtain Regular Shipper status without the use of history transfers.<sup>34</sup>

18. The Complainants did not file reply comments nor did any of the original intervenors. The only entity to file reply comments was World Fuels Services, Inc. (World Fuels), a Regular Shipper on Colonial. World Fuels asks the Commission to allow history transfers on Colonial to continue unchanged. World Fuels corroborates Colonial's narrative that circumstances have changed since the investigation began such that now "shippers that want to ship have a reasonable opportunity to ship."<sup>35</sup> Finally, World Fuels emphasizes that under no circumstances should the Commission cause capacity otherwise secured by Regular Shippers to be allocated instead to New Shippers, because many New Shippers acquire the space only to re-sell it, not to ship.<sup>36</sup>

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<sup>31</sup> Costco Wholesale Corporation, Emert Enterprises, LLC, and Concept Petroleum LLC.

<sup>32</sup> *Tricon Energy Ltd. v. Colonial Pipeline Co.*, 168 FERC ¶ 61,191, at P 3 (2019).

<sup>33</sup> Colonial October 23, 2019 Data Response at 2.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> World Fuels November 12, 2019 Data Response at 2.

<sup>36</sup> *Id.* at 2-3.



### III. Discussion

19. As discussed below, we deny the Complaint in part and grant the Complaint in part. We also terminate the broader investigation into Colonial's prorationing policies initiated by the September 2016 Order in this docket. We also direct Colonial to submit a compliance filing in 60 days to include its prorationing policy, including its Lockout Policy, in its tariff, as discussed below.

#### A. Complaint

20. The Complainants asked the Commission to prevent Colonial from enforcing its Lockout Policy so that Complainants could ship again during the months immediately following the filing of the Complaint.<sup>37</sup> The Complainants stated that "[t]he sole question raised by the [C]omplaint is whether, consistent with the ICA and the Commission's regulations, Colonial may apply its [L]ockout [P]olicy prior to Commission review and acceptance of Colonial's Tariff."<sup>38</sup> The relief Complainants seek here is a request that the Commission:

suspend Colonial's Tariff No. 98.25.0 beyond a nominal period and affirmatively find that Colonial cannot enforce the New Shipper [L]ockout [P]olicy until the effective date set forth by the Commission. To avoid any doubt, the Commission should (i) affirmatively find that Colonial cannot apply the [L]ockout [P]olicy to New Shippers' history transfers that were initiated prior to the effective date set forth by the Commission, and (ii) grant such other relief to which Tricon and Rockbriar may be entitled in this proceeding.<sup>39</sup>

21. Embedded in the sole question raised by the Complainants are four issues that we will address: (1) whether the Complaint raises jurisdictional issues; (2) whether Colonial's Lockout Policy meets the access requirements of ICA Sections 1(4) and 3(1); (3) whether Colonial's public disclosures of the Lockout Policy meet the tariff filing requirements of ICA Section 6(1); and (4) how findings on the first three issues apply to

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<sup>37</sup> The Complainants asserted that they had been deprived of access to Colonial since November 2015. Complaint at 13. Therefore, the subject period of the Complaint is the 14-month period of November 2015 through December 2016, inclusive.

<sup>38</sup> Complaint at 14.

<sup>39</sup> *Id.* at 14-15.

the Complainants. As discussed below, the Complaint is denied in part and granted in part.

### 1. Commission Jurisdiction

22. We find that the Complaint against Colonial's Lockout Policy raises issues within the Commission's jurisdiction, and we reject Colonial's argument to the contrary. The Commission has jurisdiction to regulate interstate transportation service by pipeline.<sup>40</sup> Moreover, under section 1(4) of the ICA, the Commission has jurisdiction to ensure that a pipeline "provide and furnish transportation upon reasonable request. . . ."<sup>41</sup> The Complainants' allegation that Colonial's Lockout Policy improperly denies a shipper's "reasonable request" for transportation service raises issues within the Commission's ICA jurisdiction. Furthermore, Colonial has conceded in other proceedings that the Lockout Policy is an integral aspect of the pipeline's capacity allocation and prorationing policy,<sup>42</sup> and the Commission has jurisdiction over pipelines' prorationing and allocation policies.<sup>43</sup>

23. We are unpersuaded by Colonial's arguments that the Commission lacks jurisdiction.<sup>44</sup> Contrary to Colonial's assertions, the Complaint neither asks the Commission to regulate a mere "administrative service" nor does the Complaint request that the Commission regulate a "commercial arrangement" between shippers.<sup>45</sup> Rather, the Complaint challenges Colonial's application of the Lockout Policy to deny transportation service to a shipper for 14 months if that shipper transfers its history to

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<sup>40</sup> 49 U.S.C. App. § 1(1).

<sup>41</sup> 49 U.S.C. App. § 1(4).

<sup>42</sup> Colonial's May 31, 2016 Answer in Docket No. IS16-259-001 at 2-3 (citing Colonial's April 22, 2016 Post-Technical Conference Reply Comments in Docket No. IS16-61-000 at 3-6). Colonial also includes the Lockout Policy in the "Prorationing and Capacity Allocation Program" section of its shipper manual. Colonial September 2016 Shipper Manual § 2.6.6. As explained above, under Colonial's prorationing policy, a shipper that transfers history (1) does not have any history to ship as a Regular Shipper and (2) cannot become a New Shipper for 14 months.

<sup>43</sup> See *Amoco Pipeline Co.*, 82 FERC ¶ 61,108 at 61,386 (citing *Total Petroleum, Inc.*, 76 FERC ¶ 61,164).

<sup>44</sup> Colonial's May 31, 2016 Answer in Docket No. OR16-17-000 at 19-21.

<sup>45</sup> For example, the Complaint does not challenge the transfer of history between shippers or the commercial deals between shippers that lead to such history transfers.

another shipper. For the reason discussed above, the Commission has jurisdiction to determine whether the denial of oil pipeline transportation service to these shippers is just and reasonable<sup>46</sup> and not unduly preferential<sup>47</sup> and whether Colonial is failing, as required by the ICA, “to provide and furnish transportation service upon reasonable request.”<sup>48</sup>

2. **Whether Colonial’s Lockout Policy is Just and Reasonable and Non-Discriminatory**

24. Based on a review of the record, we find that Colonial’s Lockout Policy is just and reasonable, and not unduly discriminatory or preferential.

25. ICA Section 1(4) requires a pipeline to furnish service upon reasonable request. ICA Section 3(1)<sup>49</sup> prohibits undue preference or discrimination among categories of shippers. As a result, all terms and conditions for transportation service on Colonial must provide for service upon reasonable request without undue preference among categories of shippers. We find that Colonial’s prorationing policy is not unduly discriminatory because it applies equally to any shipper who elects to transfer its history.

26. Further, we find that Colonial’s Lockout Policy is a reasonable facet of its prorationing policy because it facilitates an orderly transfer of a shipper’s business or asset interest from a transferring shipper who no longer ships on Colonial to a buyer, allowing the buyer to step into the shoes of the transferring shipper. As Colonial points out, the process is not designed to create additional history (beyond what would exist on the system without the transfer) but rather to associate the history with the entity that is actually shipping the product.<sup>50</sup> Accordingly the so-called “locking out” of a transferring shipper is not unreasonable, inasmuch as no one would expect the transferring shipper to continue to ship having sold its related business or assets. From this point of view, the Lockout Policy is not a denial of service upon reasonable request, but rather an appropriate way to implement an accurate transfer that is fair to all shippers.

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<sup>46</sup> 49 U.S.C. App. § 15(1).

<sup>47</sup> *Id.* § 3(1).

<sup>48</sup> *Id.* § 1(4).

<sup>49</sup> 49 U.S.C. App. § 3(1).

<sup>50</sup> Colonial’s May 31, 2016 Answer in Docket No. OR16-17-000 at 8.

27. In addition, as Colonial points out, no shipper is required to make a history transfer.<sup>51</sup> History transfers are optional, but if a shipper does elect to make a transfer, it cannot do so in a manner that adversely affects other shippers on the system. As long as a transferring shipper knows that it will be locked out during the pendency of its transfer, there can be no basis for claiming that the policy discriminates against shippers who choose to initiate a history transfer.

### 3. Tariff Filing Requirements

28. ICA Section 6(1) requires that rates and terms of service be filed with the Commission and be conspicuously posted for shipper inspection.<sup>52</sup> The Commission has previously found that a tariff provision gives shippers sufficient notice of the pipeline's prorationing rules if the tariff provision generally describes the pipeline's prorationing policy and refers by title and effective date to a publicly available document that contains the details of the policy.<sup>53</sup>

29. Based on a review of Colonial's effective tariff and the shipper manual published on its website both at the time the Complaint was filed and in April 2020, we direct Colonial either to modify item 31 in its tariff (the provision that sets forth its prorationing policy) to refer to the Lockout Policy that appears in its shipper manual or to explicitly state the Lockout Policy in its tariff. The description of the Lockout Policy in the shipper manual does not satisfy the notice requirement because Colonial's tariff does not reference by title and effective date this section of the shipper manual. Accordingly, we direct Colonial to modify its tariff to include the Lockout Policy explicitly in Colonial's tariff or by referencing Colonial's shipper manual in its tariff. We note that if Colonial chooses to incorporate the Lockout Policy by referencing the shipper manual in its tariff, any future changes to the underlying document must be noticed by refileing the tariff to correct the title and effective date of the change in the policy.<sup>54</sup>

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<sup>51</sup> *Id.* at 9.

<sup>52</sup> 49 U.S.C. App. § 6(1).

<sup>53</sup> *See Amoco Pipeline Co.*, 82 FERC ¶ 61,108 at 61,386 (citing *Total Petroleum, Inc.*, 76 FERC ¶ 61,164); *see also EOTT Energy Operating Ltd. P'ship*, 93 FERC ¶ 61,084, at 61,225 (2000) (finding that identification by title, effective date and availability upon request in a supplemental document met the Commission's requirements for notice of the proration policy to the shipping public).

<sup>54</sup> *See Amoco Pipeline Co.*, 82 FERC ¶ 61,108 at 61,386.

**4. Application of These Findings to the November 2015 Through December 2016 Period**

30. We deny the Complainants' requested relief regarding the Lockout Policy as applied to the 14-month lockout period of November 2015 through December 2016. In each of the orders previously issued in the instant Complaint proceeding and the related tariff proceeding in Docket No. IS16-259, the Commission did not direct Colonial to cease enforcing its Lockout Policy while the investigation remained ongoing.<sup>55</sup> Moreover, the Complainants sought a Commission order directing Colonial to cease the application of its Lockout Policy during the November 2015 through December 2016 period, but that time period has now passed. Therefore, the relief sought is hereby denied.

**B. Investigation**

31. Consistent with the discussion regarding Colonial's Lockout Policy, we direct Colonial to incorporate by reference the relevant portions of its shipper manual pertaining to its prorationing policy or to include its entire prorationing policy in its tariff.<sup>56</sup> Although Colonial's tariff includes aspects of its prorationing policy, Colonial's tariff does not include the entire policy. The remainder of the prorationing policy is included in Colonial's shipper manual, but these portions of the shipper manual are not referenced by Colonial's tariff. In order for the provisions in the shipper manual to satisfy the notice requirements of ICA Section 6(1), these sections of the shipper manual must be referenced in the tariff. Additionally, any future changes to the relevant sections of the shipper manual must be noticed by refileing the tariff to correct the title and effective date of the change in the policy.

32. In the September 2016 Order, the Commission stated that it would address Flint Hills' filing as a part of this investigation.<sup>57</sup> We are not persuaded by Flint Hills'

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<sup>55</sup> Although the Commission rejected the revised tariff in the 2016 Order on Tariff Filing, it did so on the basis that Colonial's filing lacked an explanation of and justification for its Lockout Policy that warranted further inquiry in a broader context; however, the Commission did not direct Colonial to stop enforcing its Lockout Policy during the final months of 2016 while this inquiry proceeded. In fact, in the 2016 Order Requesting Information, the Commission deferred action until information could be gathered from Colonial and other parties about how this policy operated in a broader context.

<sup>56</sup> See *Amoco Pipeline Co.*, 82 FERC ¶ 61,108 at 61,386 (citing *Total Petroleum, Inc.*, 76 FERC ¶ 61,164).

<sup>57</sup> September 2016 Order, 156 FERC ¶ 61,176 at P 21.

objections to Colonial's policies regarding shipments originating at Moundville. Because Moundville is downstream of the choke point near Collins, barrels originating at Moundville do not move through the Collins choke point. Accordingly, volumes originating at Moundville should not count toward the shipper's historical volumes for purposes of prorationing at the Collins choke point. Furthermore, if a shipper nominates volumes through the Collins choke point, volumes originating downstream at Moundville should not satisfy the shipper's obligation to ship its nominated volumes through Collins. Accordingly, we deny Flint Hills' claims.

33. As to the remainder of the issues in the investigation, the Commission's purpose for issuing the September 2016 Order was to address general concerns about the capacity allocation and history transfer issues on Colonial's system. The responses following the September 2019 Order Requesting Information support the decision to terminate this docket. In response to the Commission's request for data regarding the number of full history transfers, Colonial provided data showing a pronounced drop in the number of history transfers after changes in the commodities markets, which also corresponded to the end of the period of prolonged prorationing.<sup>58</sup> Colonial also provided data showing that New Shippers have been able to obtain Regular Shipper status with and without the use of history transfers.<sup>59</sup> The only shipper comments that were filed support the representations made by Colonial. Moreover, the Commission has not received any filings since 2017 indicating that shipper concerns with Colonial's capacity allocation policy have persisted. Accordingly, the investigation is hereby terminated.

#### **IV. Conclusion**

34. For the reasons discussed above, the Complaint is granted in part, and denied in part, and Colonial is directed to modify its tariff within 60 days of the date of issuance of this order to refer to the Lockout Policy that appears in its shipper manual or to explicitly state the Lockout Policy in its tariff. Moreover, the investigation initiated by the September 2016 Order in Docket No. OR16-17-000 is terminated, and Colonial is directed, within 60 days of the date of issuance of this order, to incorporate by reference the relevant portions of its shipper manual pertaining to its prorationing policy or to include its entire prorationing policy in its tariff.

#### **The Commission orders:**

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

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<sup>58</sup> Colonial October 23, 2019 Data Response at 2.

<sup>59</sup> *Id.* at 3.

(B) Colonial is directed to include its prorationing policy in its tariff, including the Lockout Policy, within 60 days of the date of issuance of this order as discussed above.

(C) The investigation initiated by the Commission's September 2016 Order in this docket is terminated, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.