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Enterprise Lou-Tex Propylene Pipeline, L.P.
Order on Jurisdiction and Lifting Suspension
110 FERC ¶ 61,068 (2005)

Enterprise Lou-Tex Propylene Pipeline (Enterprise) filed a supplement to cancel its tariff on file with the Commission, stating that the tariff relates to Chemical Grade Propylene. Enterprise noted that the Commission has held in other instances that: "if a hydrocarbon product shipped by an oil pipeline is not used for energy purposes, the Commission lacks jurisdiction over the transportation of that product." Texaco Petrochemical Pipeline, L.L.C., 107 FERC ¶61,151 (2004) (ethylene); Gulf Central Pipeline Company, 50 FERC ¶61,381 (1990) (anhydrous ammonia); Sabine Propylene Pipeline, L.P., 109 FERC ¶61,025 (2004) (polymer grade propylene). Enterprise sought a similar ruling.

In an order issued earlier in this docket (110 FERC ¶61,088), the Commission accepted the filing and suspended it for seven months. The Commission instructed Enterprise and other interested parties to file briefs on whether the Commission or the Surface Transportation Board (the Board) had jurisdiction over the interstate transportation of chemical grade propylene.

Based on the information provided, the Commission concluded that authority over the transportation of chemical grade propylene by interstate oil pipelines rested with the Board. Accordingly, the Commission rescinded the suspension of the tariff supplement and accepted it effective the date of the Commission's order.

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111 FERC ¶61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Enterprise Lou-Tex Propylene Pipeline L.P. Docket No. IS05-117-000

ORDER ON JURISDICTION AND LIFTING SUSPENSION

(Issued April 18, 2005)

1. On January 7, 2005, Enterprise Lou-Tex Propylene Pipeline L.P. (Enterprise Lou-Tex) filed Supplement No. 1 to its FERC Tariff No. 2 to become effective February 7, 2005. The supplement would cancel Enterprise Lou-Tex's FERC Tariff No. 2 now on file with the Commission so as to remove from Commission rate regulation the transportation of Chemical Grade Propylene from Mt. Belvieu, Texas, to the Baton Rouge, Louisiana area and points between.

2. In an order issued February 1, 2005, the Commission accepted and suspended the proposed supplement for seven months to be effective September 7, 2005, and invited interested persons to submit briefs concerning whether the Commission or the Surface Transportation Board (Board) has jurisdiction over the transportation of Chemical Grade Propylene (February 1, 2005 order).[1]

3. As discussed below, the Commission concludes that it does not have jurisdiction over the transportation of Chemical Grade Propylene and that the Board does have such jurisdiction. This order benefits customers by clarifying which federal entity regulates the transportation of this product.

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[1] *Enterprise Lou-Tex Propylene Pipeline L.P.*, 110 FERC ¶ 61,088 (2005).

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Discussion

4. In its filing, Enterprise Lou-Tex cited *Texaco Petrochemical Pipeline LLC* (*Texaco*)[2] and *Gulf Central Pipeline Co.* (*Gulf Central*),[3] contending that the Commission has held that, if a hydrocarbon product shipped by an oil pipeline is not used for energy purposes, the Commission lacks jurisdiction over the transportation of that product. Because it contended that Chemical Grade Propylene is not used for energy purposes, Enterprise Lou-Tex argued that jurisdiction over the transportation of the product properly rests with the Board, where Enterprise Lou-Tex would remain subject to common carrier and rate reasonableness regulation. Enterprise Lou-Tex also pointed out that the Commission recently held that jurisdiction over the movement of Polymer Grade Propylene rests with the Board, not the Commission, because Polymer Grade Propylene is not used for energy purposes.[4]

5. In the February 1, 2005 Order, the Commission concluded that it lacked sufficient information to permit the proposed cancellation of FERC Tariff No. 2 as requested by Enterprise Lou-Tex by its filing of Supplement No. 1. In part, the Commission indicated that it required additional, more detailed information to allow it to determine the potential impact on other pipelines and other energy-related commodities. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act (ICA),[5] the Commission accepted and suspended proposed Supplement No. 1 to Enterprise Lou-Tex's FERC Tariff No. 2 for seven months and invited interested parties, including the Board, to intervene and brief the issues raised by the filing.

6. On March 3, 2005, Enterprise Lou-Tex filed its brief regarding jurisdictional issues. On March 14, 2005, the Board filed its brief in response to the brief of Enterprise Lou-Tex.

Discussion

7. Enterprise Lou-Tex states that the Commission's jurisdiction under the ICA covers the transportation of "oil" by pipeline. According to Enterprise Lou-Tex, crude oil and

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[2] 107 FERC ¶ 61,151 (2004).

[3] 50 FERC ¶ 61,381 (1990), *aff'd sub nom. CF Industries Inc. v. FERC*, 925 F.2d 476 (D.C. Cir. 1991).

[4] *Sabine Propylene Pipeline L.P.*, 109 FERC ¶ 61,025 (2004).

[5] 49 U.S.C. app § 1 *et seq.* (1988).

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refined petroleum products such as gasoline, kerosene, jet fuel, and heating oil clearly meet the definition of "oil." However, Enterprise Lou-Tex contends that a closer question exists with respect to liquid petrochemical products, such as ethylene or propylene, which are derived from oil or natural gas. It maintains that, for products such as these, the Commission previously has found that the critical issue is whether the product is used as a source of energy.

8. Enterprise Lou-Tex cites *Gulf Central Pipeline Co.*,[6] contending that the Commission held in that case that anhydrous ammonia is not "oil" for purposes of Commission jurisdiction because it is not used to produce energy. According to Enterprise Lou-Tex, the Commission reached similar conclusions in *Texaco Petrochemical Pipeline LLC*[7] and *Sabine Propylene Pipeline L.P.*[8]

9. Enterprise Lou-Tex explains that it transports only Chemical Grade Propylene and not any other grades of propylene.[9] According to Enterprise Lou-Tex, the product is not used for energy purposes, but instead is used primarily in the production of various types of plastics. Enterprise Lou-Tex further explains that most of the Chemical Grade Propylene is used to make polypropylene, which is used to manufacture various consumer products such as tableware, toys, car parts, outdoor furniture, building components, food packaging, film, surgical casts, and fibers for woven tape, rope, and twine.

10. Enterprise Lou-Tex states that other uses of Chemical Grade Propylene include the manufacture of other petrochemical products that ultimately are used to produce such varied items as housewares, disposable medical materials, telephones, computer disks, various textiles, suntan lotion, pharmaceuticals, cosmetics, deicing fluid, synthetic leathers, paints, floor polishes, and other consumer products. According to Enterprise Lou-Tex, the primary reason Chemical Grade Propylene is not used for energy purposes is the expense involved in manufacturing it from other substances that are far more

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[6] 50 FERC ¶ 61,381, at 62,163, 62,166-67 (1990).

[7] 107 FERC ¶ 61,151 (2004).

[8] 109 FERC ¶ 61,025 (2004).

[9] Enterprise Lou-Tex attaches to its brief the supplemental affidavit of Gil Radtke, who manages Enterprise Lou-Tex. The supplemental affidavit updates Mr. Radtke's affidavit included with the January 7, 2005 filing in this proceeding and further explains in detail the uses and characteristics of Chemical Grade Propylene.

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cheaply and easily used as fuels. In fact, continues Enterprise Lou-Tex, Chemical Grade Propylene is not even used as a fuel by the pipelines that transport it. Additionally, Enterprise Lou-Tex states that use of Chemical Grade Propylene as a fuel could be dangerous and have adverse environmental effects. For all of these reasons, Enterprise Lou-Tex asserts that Chemical Grade Propylene does not meet the ICA definition of oil, and jurisdiction over the transportation of this product properly resides with the Board.

11. Finally, Enterprise Lou-Tex argues that the transportation of Chemical Grade Propylene has no effect on other pipelines and energy-producing commodities. Enterprise Lou-Tex emphasizes that, because of the product's purity, pipelines that transport Chemical Grade Propylene are never used to transport any energy-producing commodity or, for that matter, other grades of propylene without being thoroughly cleaned before being returned to pure Chemical Grade Propylene service. However, continues Enterprise Lou-Tex, even if other products were transported with the Chemical Grade Propylene, that would not be sufficient to confer on the Commission jurisdiction over Chemical Grade Propylene movements.[10] Enterprise Lou-Tex also states that Chemical Grade Propylene is not a substitute for any energy-related product such as oil, gasoline, or jet fuel, and it does not compete for pipeline capacity with those products.

12. In its reply comments, the Board states that, assuming the accuracy of the representations by Enterprise Lou-Tex, the Board, rather than the Commission, has jurisdiction over pipeline transportation of Chemical Grade Propylene. No other person intervened or protested the Enterprise Lou-Tex's filing in this proceeding.

13. The Commission concludes that it does not have jurisdiction over the transportation of Chemical Grade Propylene. While it is unquestionably a hydrocarbon product, the information contained in the brief of Enterprise Lou-Tex establishes that the product is not used for energy purposes. The Commission further concludes that jurisdiction over the transportation of Chemical Grade Propylene resides with the Board, which agrees that it has jurisdiction under these circumstances.

14. Accordingly, the Commission lifts the suspension of Supplement No. 1 to Enterprise Lou-Tex's FERC Tariff No. 2 effective the date this order issues. Other pipelines with tariffs on file with the Commission for the transportation of Chemical Grade Propylene should file to cancel those tariffs and should comply with any applicable Board requirements if they continue to transport Chemical Grade Propylene.

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[10] Enterprise Lou-Tex cites *Sinclair Oil Corp. v. Chevron Pipe Line Co.*, 105 FERC ¶ 61,290, at P 34 (2003); *Amoco Pipeline Co.*, 62 FERC ¶ 61,119, at 61,803-04 (1993).

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The Commission orders:

(A) The suspension of Enterprise Lou-Tex's Supplement No. 1 to its FERC Tariff No. 2 is lifted, and the supplement is accepted to become effective the date this order issues.

(B) Within 10 days of the date this order issues, Enterprise Lou-Tex must file a consecutively numbered tariff supplement which cancels Supplement No. 2 to FERC Tariff No. 2 (Suspension Supplement) and corrects Supplement No. 1 to FERC Tariff No. 2 (Cancellation Supplement). Enterprise Lou-Tex must correct the effective date of Supplement No. 1 to comply with ordering paragraph (A) above.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.