

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 ACCEPTING AND SUSPENDING TARIFF SUPPLEMENT

(Issued February 1, 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. The practical effect of the cancellation is 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. The Commission will accept and suspend the proposed supplement for seven months to be effective September 7, 2005. It is in the public interest to maintain the current status while providing time for the Commission to conduct an investigation of this filing.

2. Enterprise Lou-Tex asserts that the Commission recently 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."¹ Because Chemical Grade Propylene is not used for energy purposes, Enterprise Lou-Tex believes that jurisdiction over the transportation of the product properly rests with the Surface Transportation Board (Board), where Enterprise Lou-Tex would continue to be subject to common carrier and rate reasonableness regulation. Enterprise Lou-Tex states in applying this standard to movements of Polymer Grade Propylene, the Commission recently held that jurisdiction over such movements rests with the Board, not *the Commission*, since Polymer Grade Propylene is not used for energy purposes.²

¹ Enterprise Lou-Tex cites *Texaco Petrochemical Pipeline LLC*, 107 FERC ¶ 61,151 (2004) (*Texaco*); see also *Gulf Central Pipeline Co.*, 50 FERC ¶ 61,381 (1990), *aff'd sub nom. CF Industries Inc. v. FERC*, 925 F.2d 476 (D.C. Cir. 1991).

² *Sabine Propylene Pipeline L.P.*, 109 FERC ¶ 61,025 (2004).

3. Enterprise Lou-Tex explains that propylene is manufactured and transported in three forms: Polymer Grade Propylene, Chemical Grade Propylene, and Refinery Grade Propylene. However, Enterprise Lou-Tex states that it transports only Chemical Grade Propylene, which is used to manufacture plastics and other propylene derivatives. According to Enterprise Lou-Tex, the product value of Chemical Grade Propylene is so high that it is not cost-effective to use it in fuel and, further, it does not contribute any beneficial quality as an energy product. In addition, continues Enterprise Lou-Tex, it cannot employ a pipeline that transports Chemical Grade Propylene to transport Refinery Grade Propylene without a complete change of pipeline service.

4. The Commission concludes that it lacks sufficient information to permit the proposed cancellation FERC Tariff No. 2 as requested by Enterprise Lou-Tex in Supplement No. 1, to become effective on February 7, 2005. While Enterprise Lou-Tex asserts that the Chemical Grade Propylene is not used as a fuel, the product clearly is hydrocarbon-based. Moreover, while Enterprise Lou-Tex states that the primary use of Chemical Grade Propylene is in the manufacture of plastics and other propylene derivatives, Enterprise Lou-Tex does not fully discuss other possible commercial uses for Chemical Grade Propylene. Because the Commission has not addressed previously whether it has jurisdiction over the transportation of this commodity, and because the Commission's ruling here may affect the rate structures of other pipelines if one of their commodities is not regulated, the Commission requires additional, more detailed information so that it can determine the potential impact on other pipelines and other energy-related commodities.

5. For these reasons, the Commission will accept and suspend proposed Supplement No. 1 to Enterprise Lou-Tex's FERC Tariff No. 2 pursuant to section 15(7) of the Interstate Commerce Act (ICA)³ for a period of seven months. While the Commission rarely suspends oil pipeline filings for more than the minimum period, in this case, suspending the filing for the maximum statutory period will afford the Commission the opportunity for a thorough review of the proposal to ensure that cancellation of Enterprise Lou-Tex's FERC Tariff No. 2 is appropriate. Suspension for the maximum period also will preclude additional cancellation supplements before the Commission resolves the broader issues. Accordingly, the Commission sets this proceeding for a paper hearing, directs Enterprise Lou-Tex to submit a brief addressing the jurisdictional issue, and invites interested persons to intervene and brief the issues raised by this proceeding. The Commission also will issue a public notice of this filing to advise

³ 49 U.S.C. app § 1 *et seq.* (1988).

interested persons of the issues presented and the time schedule for filing briefs. Further, the Commission will lodge a copy of this order with the Board and welcomes the Board's participation in this proceeding. Parties should file initial briefs within 30 days of the date this order issues, with reply briefs due 15 days thereafter.

The Commission orders:

(A) Pursuant to section 15(7) of the ICA, Enterprise Lou-Tex's Supplement No. 1 is accepted and suspended for seven months, to become effective September 7, 2005, subject to the outcome of the Commission's investigation.

B) Initial briefs on the jurisdictional matter at issue here must be filed by Enterprise Lou-Tex and any other interested persons within 30 days of the date of issuance of this order, with reply briefs due 15 days thereafter.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.