

109 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sabine Propylene Pipeline L.P.

Docket No. IS04-487-000

ORDER ON JURISDICTION AND LIFTING SUSPENSION

(Issued October 7, 2004)

1. On July 30, 2004, the Commission issued an order in this proceeding suspending Sabine Propylene Pipeline L.P.'s (Sabine) Supplement No. 1 to its FERC Tariff No. 1 and inviting Sabine and other interested persons to submit briefs concerning whether the Commission has jurisdiction over the transportation of Polymer Grade Propylene. Supplement No. 1 cancels Sabine's FERC Tariff No. 1 (July 30, 2004 Order).¹ Sabine asserts that jurisdiction over the transportation of this product properly rests with the Surface Transportation Board (Board).

2. As discussed below, the Commission concludes that it does not have jurisdiction over the transportation of Polymer 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.

Discussion

3. On July 1, 2004, Sabine filed Supplement No. 1 to its FERC Tariff No. 1 to be effective August 1, 2004. Sabine stated that the supplement would cancel FERC Tariff No. 1 and that the practical effect of the cancellation would be to remove from Commission rate regulation the transportation of Polymer Grade Propylene between Port Arthur, Texas, and Orange, Texas, as part of a continuous movement to a petrochemical plant outside the State of Texas. According to Sabine, while propylene is manufactured

¹ *Sabine Propylene Pipeline L.P.*, 108 FERC ¶ 61,099 (2004).

in three forms, Polymer Grade Propylene is used in the manufacture of plastics and other propylene derivatives, but it is not used for energy purposes. Sabine argued that the Board, not the Commission, has jurisdiction over the transportation of the product.²

4. In the July 30, 2004 Order, the Commission accepted and suspended the supplement for seven months, concluding that Sabine had failed to provide sufficient information to support its filing. Therefore, the Commission directed Sabine to submit additional supporting information and invited other interested persons to submit briefs on the issue of whether the Commission has jurisdiction over the transportation of Polymer Grade Propylene. The Commission also issued a public notice to advise interested persons of the issues presented and the time schedule for filing briefs.

5. Sabine filed its initial brief on August 30, 2004. Sabine maintains that Polymer Grade Propylene does not come within the jurisdictional definition of “oil” that is contemplated by the Interstate Commerce Act (ICA).³ Sabine argues that, while products such as gasoline, kerosene, jet fuel, and heating oil clearly meet the definition of “oil,” the Commission has found that liquid petrochemical products derived from oil or natural gas are within the definition of “oil” only if they are used as sources of energy.⁴

² Sabine cites *Texaco Petrochemical Pipeline LLC*, 107 FERC ¶ 61,151 (2004) (*Texaco*); *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).

³ Sabine cites 42 U.S.C. § 7155. Sabine points out that when jurisdiction was transferred from the Interstate Commerce Commission (ICC) to this Commission, it was limited to “transportation of oil by pipeline.” According to Sabine, jurisdiction over all other pipeline movements (except those relating to water and natural gas) remain with the ICC’s successor, the Board. Sabine cites 49 U.S.C. § 10501(a) (Board’s pipeline jurisdiction encompasses all commodities other than water, gas, or oil).

⁴ Sabine cites *Gulf Central Pipeline Co.*, 50 FERC ¶ 61,381 (1990) (determining factor was whether anhydrous ammonia was used as a fuel source); *Texaco Petrochemical Pipeline LLC*, 107 FERC ¶ 61,151 at P 5 (2004) (“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”).

6. Sabine explains in detail that Polymer Grade Propylene is not used for energy purposes, but rather primarily is used in the production of various types of plastics.⁵ For example, Sabine states that Polymer Grade Propylene is utilized in the manufacture of tableware, toys, car parts, outdoor furniture, building components, food packaging, film, surgical casts, and fibers for woven tape, rope, and twine. Sabine further states that Polymer Grade Propylene is used in the manufacture of other petrochemical products that are used in the production of acrylic fibers, housewares, disposable medical materials, telephones, computer disks, and various textiles for apparel, carpets, draperies, and blankets.

7. Moreover, continues Sabine, Polymer Grade Propylene is used in the production of petrochemical products, which are in turn used to make detergent, polyurethane foam, suntan lotion, pharmaceuticals, cosmetics, de-icing fluid, and plasticizers, which give flexibility to products such as floor and wall coverings, wire and cable insulation, synthetic leathers, automotive applications, and healthcare products. Finally, Sabine explains that Polymer Grade Propylene is used in the production of petrochemical products that are used to make paints, floor polish, and adhesives, rubbing alcohol, pharmaceuticals, coating solvents, cosmetics, and aerosols.

8. Sabine emphasizes that none of the known commercial uses for Polymer Grade Propylene involves energy production. Sabine explains that the expense of manufacturing Polymer Grade Propylene makes it economically prohibitive for use as an energy source. Additionally, Sabine points out that Polymer Grade Propylene is not even used to fuel Sabine's own pipeline, which is powered by electric pumps. Indeed, cautions Sabine, the product could be dangerous for use as a fuel, and it could have undesirable environmental effects so there are strict emission standards relating to its release.

9. Sabine also argues that the transportation of Polymer Grade Propylene has no effect on energy-producing commodities. Sabine emphasizes the necessary purity level of the Polymer Grade Propylene, observing that pipelines transporting this commodity are never used to transport any energy-producing commodity. Thus, reasons Sabine, a

⁵ Sabine attaches to its brief the supplemental affidavit of Gil Radtke, who has responsibility for managing Sabine. The supplemental affidavit updates Mr. Radtke's affidavit included with Sabine's July 1, 2004 cancellation supplement. Sabine's explanation of the uses of Polymer Grade Propylene is based on the supplemental affidavit.

Docket No. IS04-487-000

4

determination that Polymer Grade Propylene pipelines are not jurisdictional will not affect the rate structures of other pipelines or have any effect on pipelines that transport energy-related products.

10. On August 30, 2004, the Board filed Initial Comments. The Board states that, if Sabine's representations are true, the Board, rather than the Commission, has jurisdiction over the transportation of Polymer Grade Propylene. No person filed comments opposing Sabine's cancellation supplement.

11. The Commission concludes that it does not have jurisdiction over the transportation of Polymer Grade Propylene. While it is unquestionably a hydrocarbon product, the additional information contained in Sabine's brief establishes that it is not used for energy purposes. The Commission further concludes that jurisdiction over the transportation of Polymer Grade Propylene resides with the Board, which agrees that it has jurisdiction under these circumstances.

12. Accordingly, the Commission lifts the suspension of Supplement No. 1 to Sabine's FERC Tariff No. 1 effective as of the date of issuance of this order. Other pipelines with tariffs on file with the Commission for the transportation of Polymer Grade Propylene should file to cancel those tariffs and should comply with any applicable Board requirements if they continue to transport Polymer Grade Propylene.

The Commission orders:

(A) The suspension of Sabine's Supplement No. 1 to its FERC Tariff No. 1 is lifted, and the supplement is accepted to be effective as of the date of issuance of this order.

(B) Within 10 days of the date of issuance of this order, Sabine must file a consecutively numbered tariff supplement which cancels Supplement No. 1 to FERC Tariff No. 1 (Suspension Supplement) and corrects FERC Tariff No. 1 (Cancellation Notice). The effective date in FERC tariff No. 1 must be corrected in compliance with ordering paragraph (A).

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.