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Decision 96-01-022 January 24, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Kinley Pipelines of California and SFPP, L.P., for Authorization for Kinley Pipelines of California to Sell, Assign and Transfer Property and Related Franchises, Permits and Rights to SFPP, L.P. and the Request of Kinley Pipelines of California and SFPP, L.P., for Authorization to Modify Related Tariff Schedule and

ORIGINAL

Application 95-08R074 (Filed August 28, 1995)

OPINION

Kinley Pipelines of California (Kinley), a California general partnership, owns and operates a small pipeline system that solely transports jet fuel, pursuant to a tariff, for the United States Department of Defense (the Government) from Kinley's terminal in Fresno, California to the United States Naval Air Station in Lemoore, California. Jet fuel is shipped to Kinley's terminal through a pipeline owned and operated by SFPP, L.P. (SFPP).

SFPP is a limited partnership organized under the laws of the State of Delaware, and qualified to do business in California. Santa Fe Pacific Pipelines, Inc. formerly known as Southern Pacific Pipe Lines, Inc. (The General Partner) is SFPP's sole general partner, owning a 1.0101% interest in SFPP. Santa Fe Pacific Pipeline Partners, L.P. (the Limited Partner) is SFPP's sole limited partner, owning the remaining 98.9899% interest. The Limited Partner's only asset is its interest in SFPP.

SFPP (continued)

Decision 86-01-022 January 24, 1986

SFPP owns and operates a pipeline system which transports refined petroleum products, in liquid form, in intrastate and interstate commerce. SFPP is a "pipeline company" (as defined in § 228 of the California Public Utilities (PU) Code) under the jurisdiction of the Commission.

SFPP is primarily engaged in the business of transporting refined petroleum products, including gasoline, diesel fuel, and commercial and military jet fuel, in liquid form, for integrated petroleum companies, independent refineries, the United States military, and other marketers and distributors of such products. SFPP owns and, through its General Partner, operates a pipeline system which transports such products in intrastate and interstate commerce. SFPP serves six Western states with approximately 3,300 miles of common carrier pipeline and 14 truck-loading terminals.

Neither Kinley nor SFPP has a certificate of public convenience and necessity to operate although both are subject to this Commission's jurisdiction and have been recipients of Commission decisions. (E.g., for SFPP, D.88-11-59; for Kinley, Advice Letter #1, filed June 1991.)

California PU Code § 216 provides that a "pipeline corporation" is a public utility. PU Code § 227 defines the term "pipeline" as including all real estate, fixtures, and personal property, owned, controlled operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipelines. PU Code Cal § 228 defines a "pipeline corporation" to include every corporation of person owning, controlling, operating, or managing any pipeline for compensation in this State. Both SFPP, L.P., and Kinley Pipelines of California fall within the definition of a "pipeline corporation".

(continued...)

Kinley and SFPP jointly request an order from the Local Commission authorizing (1) Kinley to sell its pipeline system and related franchises, permits, and rights to SFPP and authorizing SFPP to purchase the same and (2) the cancellation of Kinley's

(...continued) Kinley's owners formed Kinley to operate a

PU Code § 1001 sets forth the basic requirements that in certain enumerated public utilities must obtain a certificate of public convenience and necessity:

\*§ 1001. Certificate required prior to commencement of construction.

No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

Pipeline corporations are not among the statutorily enumerated public utilities which are required to obtain a certificate of public convenience and necessity.

Pipelines that transport natural gas do require a certificate of public convenience and necessity. Those pipelines are "gas corporations" under § 222, which operate "gas plants" defined in § 221 as plants which transmit gas, natural or manufactured." (PG&E v. Dow Chemical (1994) D.94-07-063.)

of outstanding indebtedness, which will have the effect of increasing its borrowing capacity and performance bond limits. SFPP proposes to purchase Kinley's pipeline system for the following reasons. First, SFPP is dedicated to owning and

Local Pipeline Tariff No. 2 and its replacement with SFPP's Local Pipeline Tariff No. 17 (effectively modifying the tariff schedule solely to substitute SFPP as the carrier) subject to, and to take effect immediately upon, the close of escrow of the proposed sale.

Kinley's owners formed Kinley to operate a small pipeline system, principally comprised of (i) a terminal (with two 30,000 BBL storage tanks) that would receive the Government's jet fuel from SFPP's pipeline in Fresno, California, and (ii) an approximately 35-mile pipeline (six-inches in diameter) that would transport such jet fuel to the United States Naval Air Station in Lemoore, California. Kinley completed construction of the pipeline system in 1991 and currently owns and operates it. Kinley is not engaged in any other pipeline business.

The Government is the only shipper that uses Kinley's pipeline system. The Government ships JP-5 jet fuel via an SFPP pipeline to Kinley's terminal in Fresno, California. At Fresno, the fuel is delivered into Kinley's storage tanks and subsequently pumped into Kinley's pipeline for transport to the Naval Air Station at Lemoore. The Government ships its fuel on Kinley's pipeline pursuant to Local Pipeline Tariff No. 2 (California PUC No. 2).

Kinley proposes to sell its pipeline system because Kinley has decided to focus its resources on the expansion and development of other businesses. Kinley wants to apply the net proceeds of the proposed sale of the pipeline system to payment of outstanding indebtedness, which will have the effect of increasing its borrowing capacity and performance bond limits.

SFPP proposes to purchase Kinley's pipeline system for the following reasons. First, SFPP is dedicated to owning and

operating pipelines as its principal business. SPPP asserts that it is the largest independent refined petroleum products pipeline in the United States in terms of revenue generated. SPPP serves six Western states with approximately 3,300 miles of common carrier pipeline and 14 truck-loading terminals. Second, the Kinley pipeline system connects with SPPP's pipeline in Fresno, California. The Kinley pipeline system will become a contiguous part of SPPP's existing pipeline system and will be operated in essentially the same manner. Third, Kinley has earned a reasonable rate of return on the pipeline system, and SPPP believes that after the proposed transaction takes effect it too will also have an opportunity to earn a reasonable rate of return on the system.

Kinley and SPPP propose that Kinley sell its pipeline system and related franchises, permits, and rights to SPPP. Kinley and SPPP are negotiating an agreement (the Agreement) to effect the transaction. Pursuant to the Agreement, Kinley will sell to SPPP substantially all of Kinley's pipeline system and related franchises, permits, and rights (the Assets). The Assets will primarily include (i) Kinley's terminal, (ii) Kinley's pipeline, pumping equipment, and associated rights-of-way, (iii) land, an office building, other improvements, furniture, fixtures, equipment, machinery, and appurtenances related to Kinley's pipeline and terminal, and (iv) franchises, licenses, permits, and other agreements related to Kinley's pipeline system. The book cost (and original cost) of the Assets are approximately \$4,720,000 and \$5,540,000, respectively.

In exchange for the Assets, SPPP will pay Kinley up to and \$6 million, with 5.0% (i.e., \$300,000) deposited at the opening of escrow and the balance deposited before the close of escrow.

The purchase price is subject to reduction based on defects and other adverse conditions. In connection with the proposed transaction, SFPP will effectively adopt the existing tariff schedule for the Kinley-Wixie pipeline by replacing it with a tariff schedule that substitutes SFPP as the carrier. Local Pipeline Tariff No. 2 sets forth the terms and conditions of transportation of petroleum products on Kinley's pipeline. Kinley and SFPP request that Local Pipeline Tariff No. 2 be canceled and replaced by Local Pipeline Tariff No. 17, subject to, and effective immediately upon, the close of escrow of the proposed sale. The terms and conditions of each tariff will be identical, except for the identity of the carrier. Kinley and SFPP request that the revised tariff schedule be filed by an Advice Letter containing the tariff changes and that the changes be deemed effective upon the Commission's receipt of the Advice Letter. Kinley and SFPP are negotiating an agreement.

This application involves only a proposed change in ownership of existing, duly licensed facilities. Applicants do not propose any new construction. Therefore, there is no possibility that the proposed transaction may have any significant impact on the environment.

**Findings of Fact**

1. Notice of the filing of the application appeared in the Daily Calendar on October 13, 1995. No protests have been filed. A hearing is not necessary.

2. The proposed transaction will result in the transfer of a public utility business to SFPP. SFPP will pay Kinley for the Assets.

3. The sale is in the public interest. The sale price is \$2 million, with \$0.5 million to be paid in escrow and the balance deposited before the close of escrow.

This (authorization is not a finding of the value of the rights and properties to be transferred. Conclusion of Law

The sale and transfer should be authorized.

Application 95-08-074 is closed.

**ORDER** This order is effective

Dated January 24, 1996, at San Francisco, California.

**IT IS ORDERED that:**

1. On or before June 30, 1996, Kinley Pipelines of California may sell and SPPP, L.P., may purchase Kinley's pipeline system and related franchises, permits, and rights as described in their application in accordance with the terms of the documents attached to the application.

2. Upon completion of the sale, Kinley's Local Pipeline Tariff No. 2 is canceled and SPPP's Local Pipeline Tariff No. 17 is effective.

3. Within 10 days of the actual transfer, SPPP, L.P. shall notify the Commission Advisory and Compliance Division, in writing, of the date on which the transfer was completed. A true

copy of the instrument effecting the transfer shall be attached to the written notification. At the same time, SFPP shall file in an Advice Letter, according to GO 96-A, to comply with this order and to add to its tariffs California Public Utilities Code No. 17. The sale and

4. Application 95-08-074 is closed.  
This order is effective today.

Dated January 24, 1996, at San Francisco, California.

IT IS ORDERED THAT:

1. On or before June 30, 1996, Kinley Pipeline of California may sell and SFPP, L.P., may purchase Kinley's pipeline system and related franchises, permits, and rights as described in their application in accordance with the terms of the documents attached to the application.  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, Jr.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners  
2. Upon completion of the sale, Kinley's local pipeline tariff No. IV is cancelled and SFPP's local pipeline tariff No. IV is effective.  
**Commissioner Daniel Wm. Fessler**  
**is necessarily absent on official business.**

3. Within 10 days of the actual transfer, SFPP, L.P. shall notify the Commission Advisory and Compliance Division, in writing, of the date on which the transfer was completed. A true