



Surface Transportation Board
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Office of the General Counsel

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October 1, 2020

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Meeting under Section 5, STB Reauthorization Act

June 28, 2017

Present: Members Begeman, Elliott, and Miller
Staff James Boles, Matthew Bornstein, Rachel Campbell, Amanda Gorski,
Theodore Hunt, Evelyn Kitay, Brian O'Boyle, Janie Sheng, Chip Vance, Onika
Williams, Amy Ziehm

Topic: NOR 42147, Dyno Nobel, Inc. v. Nustar Pipeline Operating Partnership, L.P.

Summary of the Matters Discussed, Prepared by Acting General Counsel Evelyn Kitay:

At this meeting staff briefed Board Members on certain issues in the pending Dyno Nobel, Inc. v. Nustar Pipeline Operating Partnership, L.P. proceeding. In that proceeding, Dyno Nobel has alleged that Nustar committed an unreasonable practice in violation of 49 U.S.C. § 15501(a) by requiring Dyno Nobel to pay for certain costs associated with restarting service on Nustar's pipeline. On March 24, 2017, the Board issued a decision holding the proceeding in abeyance and explaining that the dispute involves contract questions under state law, in the first instance, that are best resolved by a state or federal court. Dyno Nobel has filed a petition for reconsideration of the Board's March 24, 2017 decision. Staff briefed the Members on the following matters:

- The arguments presented in Dyno Nobel's petition for reconsideration and Nustar's reply.
 - Dyno Nobel argues primarily that the Board has exclusive jurisdiction over this dispute and that its case is based upon an unreasonable practice claim, not state contract law.
 - Nustar argues that Dyno Nobel has not met the standard for reconsideration of the Board's decision and that this case does primarily involve questions of contract law that should be determined by an appropriate court.
- The fact that, in response to the Board's decision, Nustar has initiated a lawsuit in Texas state court against Dyno Nobel concerning the meaning and validity of the alleged contracts between the parties.