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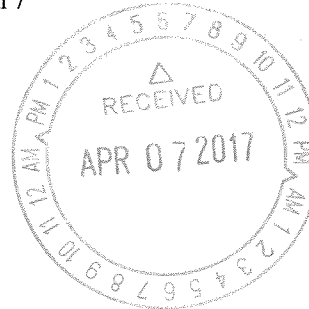
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April 7, 2017

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Cynthia T. Brown, Chief
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Surface Transportation Board
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Washington, D.C. 20423-0001

Re: Docket No. FD 42147, *Dyno Nobel, Inc., and Dyno Nobel Louisiana Ammonia, LLC v. NuStar Pipeline Operating Partnership, L.P.*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find (i) an original and ten copies of Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC's (individually and collectively, "Dyno") Petition for Reconsideration – Highly Confidential version and (ii) an original and ten copies of Dyno's Petition for Reconsideration – Public version.

Please note that the Highly Confidential version of the Petition for Reconsideration is being filed under seal in a separate envelope marked "Confidential Materials Subject to a Request for a Protective Order." A Motion for Protective Order is being separately filed pursuant to 49 C.F.R. §1104(b).

A check for the filing fee of \$300 is also enclosed.

Kindly date stamp the extra copy of this cover letter and the enclosed pleadings and return them to the bearer of this letter. Thank you for your attention to this matter.

FEE RECEIVED

April 7, 2017
SURFACE
TRANSPORTATION BOARD

Enclosures
cc: Certificate of Service List

Respectfully submitted,

Peter A. Pfohl
An Attorney for Dyno Nobel, Inc. and
Dyno Nobel Louisiana Ammonia, LLC

FILED
April 7, 2017
SURFACE
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PUBLIC VERSION

EXPEDITED ACTION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DYNO NOBEL, INC., and)
DYNO NOBEL LOUISIANA AMMONIA, LLC)

Complainants,)

v.)

NUSTAR PIPELINE OPERATING)
PARTNERSHIP, L.P.)

Defendant.)

Docket No. 42147

PETITION FOR RECONSIDERATION

DYNO NOBEL, INC. and
DYNO NOBEL LOUISIANA
AMMONIA, LLC

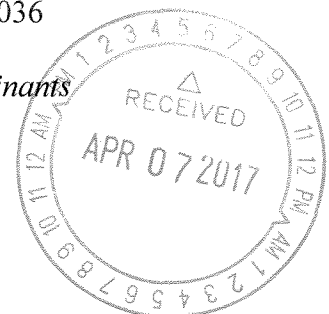
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Attorneys for Complainants



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DYNO NOBEL, INC., and)
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Docket No. 42147

NUSTAR PIPELINE OPERATING)
PARTNERSHIP, L.P.)

Defendant.)

PETITION FOR RECONSIDERATION

Pursuant to 49 U.S.C. § 722(c) and 49 C.F.R. § 1115.3(b), Complainants Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC (individually and collectively, “Dyno”), respectfully seek reconsideration and/or clarification of the Surface Transportation Board’s (“Board’s” or “STB’s”) decision served in the above-captioned proceeding on March 24, 2017, holding the proceeding in abeyance (the “Abeyance Order” or “Decision”) pending resolution of certain “questions of contract” that “would be best answered by a Louisiana state or federal court of general jurisdiction.” Decision at 4. Dyno respectfully submits that the Decision should be reconsidered, overturned, and/or clarified because it involves material error and mistake, and requires reexamination to address the issues set forth below.

PREFACE AND SUMMARY OF ARGUMENT

Dyno respectfully submits that the Board's Decision rests on material errors and mistakes of both fact and law. The Board's Decision, if unchanged, requires Dyno to proceed before a court that cannot grant the relief sought by Dyno and that likely does not have authority to hear the matter. NuStar has expressly agreed in writing and admitted in its Answer that Dyno reserved its right to pursue its unreasonable practices claim before the Board. There is no contractual dispute between the parties. To send Dyno to court is to effectively deny Dyno a remedy.

The errors in the Decision likely arose from a misunderstanding of the nature and elements of certain "agreements" that Defendant NuStar Pipeline Operating Partnership, L.P. ("NuStar") raised in its Answer, but never filed or substantiated on the record. Without the benefit of this underlying information, the Board lacked a complete record and proper foundation on which to base its Decision. Once the Board considers its findings and conclusions in light of this underlying information, the need for immediate corrective action should be apparent.

Dyno filed its unreasonable practice Complaint on June 30, 2016. On March 24, 2017, the Board issued its Decision. While neither party has threatened or initiated court litigation, the Abeyance Order nevertheless directs Dyno to seek recourse first from a Louisiana state or federal court because "the parties' dispute . . . involves primarily questions of contract interpretation and other state law issues" that present "questions of contract formation and potential voidability under Louisiana state law." Decision at 1, 4. Dyno's Complaint raises no such contract formation, interpretation, or breach claims or issues that need to be reviewed by a court under state law. Instead, its Complaint alleges that NuStar's

acts and omissions as a common carrier constituted unreasonable practices in violation of 49 U.S.C. § 15501(a).

NuStar raised as an Affirmative Defense that “[t]o the extent that the Complaint alleges that NuStar made incorrect representations to Dyno, or that NuStar’s actions somehow improperly increased the costs to Dyno resulting from its contracts with NuStar, those claims are contract claims that should be raised in a civil court of competent jurisdiction.” However, again, the Complaint makes no such allegations, and, even if it did, NuStar has the burden of proof on such issues having raised the affirmative defense. Regardless, any attempted resolution of such matters before a court would be immaterial and fruitless, because even “NuStar admits that . . . Dyno specifically reserved its rights [to seek relief at the Board] ‘as a common carrier pipeline shipper’ under the reimbursement arrangements with NuStar.” Answer at ¶27.

The Board’s Decision also errs in presuming that there is a case or controversy that could be resolved by a court and otherwise fails to provide appropriate referral guidance. It is unclear, at least to Dyno: (a) what state law questions could exist based on the underlying facts and the relief sought by Dyno; (b) why such questions would need to be addressed under Louisiana law and only by a court in Louisiana; (c) whether the Board recognizes that NuStar agreed in writing that Dyno expressly reserved all of its rights, including Dyno’s right to seek relief at the Board, when making payments to NuStar; and (d) whether a court would have the jurisdiction to resolve any of the questions contemplated given the Board’s exclusive and preemptive jurisdiction.

Therefore, the Decision, unless corrected and/or clarified, will likely result in significant and unnecessary delay, a waste of resources, and unjust, unreasonable, and

prejudicial results that are irreparable. On reconsideration, based on material error, the Board should reverse its Abeyance Order, deny NuStar's Motion to Dismiss, and allow the case to proceed under Dyno's proposed procedural schedule.

If the Board still concludes after reconsideration that the proceeding should be held in abeyance, the Board should at a minimum clarify its Decision to specify:

- (1) The precise judicial relief or determination to be sought, other than an affirmation that the parties have agreed that Dyno specifically reserved its rights to seek relief for pipeline restoration payments before the Board as a common carrier pipeline shipper;
- (2) Why the Board believes that such relief or determination would be available from a court in light of the Board's exclusive and preemptive jurisdiction over pipeline common carrier service;
- (3) How a court could assert jurisdiction to determine contract law referral questions when neither party has asserted a contractual breach or related claim and there is no known case or controversy;
- (4) Why Dyno needs to initiate such litigation, when NuStar raised the issue of contracts as an affirmative defense in its Answer and has the burden of proof to establish that Dyno somehow agreed by contract to waive or limit its rights to bring its Complaint even while acknowledging that Dyno did reserve its rights to seek Board relief;
- (5) Why relief can be sought only from a Louisiana court;
- (6) Why Louisiana law should apply; and
- (7) If the court declines to assert jurisdiction, or NuStar otherwise fails to succeed on its affirmative defense "contract formation and potential voidability under Louisiana state law" claims, that the Board's Abeyance Order will be lifted, and the Complaint allowed to proceed unimpeded before the Board.

Absent such reconsideration or clarification, the Board will be sending the parties on a trip that is likely to go nowhere and only consume substantial time and resources. In order to avoid such delay, waste, and unjust result, Dyno seeks expedited action on this petition. Dyno is also submitting documents under motion for protective order that should assist the Board to recognize and correct the error.

I. Argument

A. The Board's Jurisdiction Over Unreasonable Practices Is Exclusive and Preemptive

Only the Board has jurisdiction over an unreasonable practice complaint directed against an interstate common carrier pipeline. *See* 49 U.S.C. § 15301. Additionally, the Interstate Commerce Commission Termination Act (“ICCTA”) lacks provisions that establish the ability of a pipeline, as opposed to a railroad, to enter into transportation service contracts that can be enforced, interpreted, or declared voidable in court. The fact that a pipeline and shipper agree upon some terms and conditions might perhaps be pertinent for the Board's determination whether those terms and conditions are reasonable (Decision at 5 n.8), but that ostensible agreement would still not allow or empower a court to rule upon them, or issue what would amount to an advisory opinion over their meaning or voidability.

The Supreme Court has made clear that the Board remedies are exclusive and preclude state court actions for similar relief.

Our decision today does not leave a shipper in respondent's position without a remedy if it is truly harmed. On the contrary, an aggrieved shipper is still free to pursue the avenues for relief set forth in the statute The Act creates no other express remedies for a shipper who is damaged by a carrier's [actions] In particular, nothing in the Act suggests that Congress contemplated permitting a shipper to bring a civil damages action in state court. And such a right to sue, with its implied threat of sanctions for failure to comply with what the courts of each State consider reasonable policies, is plainly contrary to the purposes of the Act. We are thus not free to assume that it has been preserved.

Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 331 (1981). While *Kalo* addressed railroad abandonment, the Board's jurisdiction over unreasonable pipeline

practices is similarly encompassing.¹ The Abeyance Order makes no attempt to reconcile its directive to go to court with the agency's broad and exclusive jurisdiction. The absence of such an explanation constitutes material error and will, at the very least, create confusion for any reviewing court as to what issue it is to address and the basis for its jurisdiction. At a minimum, the Board should explain how the court's determination would not invade the Board's jurisdiction.

B. The Board's Decision Is Based on A Fundamental Misunderstanding of the Underlying "Agreements" NuStar Has Raised As An Affirmative Defense, But Has Failed to Submit and Establish on the Record

In its Complaint, at ¶15, Dyno fully explained the parties' initial 2012 discussions and arrangements:

15. NuStar and Dyno had a conference call on October 2, 2012, where NuStar estimated that the reactivation cost for the Fortier Branch would be \$980,000, plus or minus 15%. NuStar stated it expected reactivation to take six months from final approval and that its final approval would take approximately six weeks. NuStar also stated it had "no surprises expected" with reactivation. NuStar confirmed those estimates in subsequent discussions through 2013.

NuStar admits these facts in its Answer, and they must be accepted as true, especially for present purposes.

In its Answer, NuStar generally alleges that, "[t]he fact that the costs increased during the development of the project did not change Dyno's acceptance of its obligations

¹ Had NuStar simply refused to provide service upon reasonable request, Dyno might then have had an option to seek relief in court, as some rail shippers have done previously. Even in those situations, the question of whether the carrier's failure to provide service has been referred to and addressed by the Board. *See, e.g., Overbrook Farmers Union Coop. Ass'n - Petition for Declaratory Order - Violation of 49 U.S.C. § 11101(A)*, 5 I.C.C.2d 316 (1989).

from the outset of the process in 2012” (Answer at ¶21), and again that, “[b]efore undertaking any steps to reactivate the Fortier Lateral, NuStar had required, and Dyno agreed, that Dyno should pay the costs of reactivation” (Answer at ¶22). However, NuStar has not cited to nor provided any such specific 2012 agreement(s) – likely because none exist. Rather than view the facts as stated in the Complaint in the light most favorable to the Complainant (*e.g.*, *State of Mont. v. BNSF Ry. Co.*, No. NOR 42124 (STB served Feb. 16, 2011) at 3), the Board’s Decision appears to mistakenly rely on the conflicting generalized factual assertions made by NuStar in its Answer in directing the parties to court – and without even requiring NuStar to engage in any standard verification and proof actions.²

1. The Actual Facts Confirm Dyno’s Complaint Allegations, and Refute NuStar’s Unsupported Answer Contentions

Dyno has alleged full and sufficient facts in its Complaint that it never agreed from the outset of the process in 2012 to cover any and all costs of line service reactivation, such as right-of-way restoration costs (Complaint at ¶¶13-16, 26). Again, NuStar neither referred to, nor offered any specific conflicting evidence in its Answer that could establish a basis for any contradictory conclusion. That should be enough.

Moreover, it is NuStar’s obligation to establish and prove the existence of any such restrictive agreement during the evidentiary phase and Dyno need not and should not have to establish the *absence* of an agreement at this stage in order to proceed with its case.

² *Cf.*, *Albemarle Corp. v. La. & N. W. R.R. Co.*, No. 42097 (STB served Aug. 1, 2006), at 1 (following motion to dismiss pleadings, Board directs party exerting the existence of pertinent contracts to promptly file such contracts because “[a]s a practical matter, this jurisdictional dispute may be resolved through a simple demonstration . . . that the transportation contracts it claims to have . . . exist and apply to the past and future movements at issue here”).

Nevertheless, in order to put the matter to rest and remove any remaining uncertainty, Dyno includes at *Attachment A* one example of additional confirming facts, consisting of the parties' August 13, 2013 San Antonio, Texas contemporaneous meeting minutes (all minutes were sent to NuStar for confirmation and to provide any errors or omissions). From these meeting minutes, full pipeline reactivation costs were discussed as follows:

{{

}}

Meeting Minutes – NuStar, Transammonia, Dyno; Tuesday, August 13, 2013 – San Antonio, Texas (emphasis added). These meeting minutes further confirm that the Board's Decision is mistaken and in clear error because there simply is no agreement of any type or form from the outset of the process in 2012 to cover any and all costs of line service reactivation, particularly right-of-way restoration costs, for the Board or any referring court to consider, let alone something that could or should be used as a roadblock for regulatory relief by Dyno.

It was not until over 16 months later, in February, 2014 – well into the Waggaman Plant’s construction period and long after NuStar’s reactivation activities commenced – that NuStar suddenly disclosed it had discovered its alleged right-of-way problems (Complaint at ¶17; Answer at ¶17). These newly discovered problems ultimately resulted in total pipeline reactivation costs to dramatically jump from \$980,000 +/- 15% to ultimately over \$10,000,000 (Complaint at ¶¶21, 26; Answer at ¶¶21, 26). While Dyno ultimately was required to pay NuStar in excess of \$10 million for renewed pipeline right-of-way and associated costs, NuStar has specifically acknowledged (Answer at ¶27) that Dyno reserved all of its rights as a common carrier pipeline shipper to bring its unreasonable practice Complaint to the Board.

2. In the Post-2014 “Reimbursement Agreements” Dyno Expressly Reserved Its Right to Seek Relief from the Board

As even NuStar has acknowledged (Answer at ¶27), the reimbursement agreements expressly provide that Dyno reserved its rights to seek relief “as a common carrier pipeline shipper,” *i.e.*, at the Board, for having to pay the right-of-way restoration costs:

{{

}}³

³ Dyno specifically noted its reservations of rights in its Complaint, and NuStar did not refute Dyno’s assertion. Complaint at ¶27; Answer at ¶27. Dyno’s uncontested assertion must be accepted.

The reimbursement agreements further specify that {{
 }} Another
 provision states that the fact and amount of reimbursement {{
 }} Because NuStar failed to include copies of the underlying
 reimbursement agreements, the Board was without the benefit of this critical information
 when rendering its Decision. Toward that end, Dyno includes one representative example of
 those agreements by which Dyno initially reimbursed NuStar at *Exhibit B*.

**a. Dyno’s Reimbursement Agreements Specify {{ }} Law,
 and Not Louisiana Law**

Further confusion and error has been brought about by NuStar’s additional
 factual misrepresentations. As part of its Answer, “NuStar further states that Dyno’s
 agreement to pay these costs was established in contracts subject to the state laws of
 Louisiana.” Answer at ¶21. NuStar’s Answer is erroneous and it fails to cite to any such
 specific choice of law provision. In point of fact, the agreements under which Dyno covered
 NuStar’s costs for restoring the right-of-way for its pipeline specify that they are governed by
 {{ }} law, and not Louisiana law.⁴ *See, e.g.*, Attachment B.

⁴ To the extent the Board’s concern may be whether NuStar’s pipeline servitudes (easements) actually lapsed, Louisiana property law should govern. However, questions about the current status of the servitudes are academic because they did not lapse and have otherwise been reestablished. If the Board is seeking guidance whether the servitudes previously expired, it is essentially seeking an advisory opinion about a moot issue, which courts normally do not provide.

The Board's reliance on NuStar's misstatement and its directive to apply Louisiana law thus constitutes material error. Moreover, even if Louisiana law did apply, material error would still remain in failing to recognize that state and federal district courts in one state are competent to and regularly adjudicate matters involving the substantive law of another state.

C. Because of the Express Reservation, the Voidability of the Agreements Is Irrelevant to Dyno's Ability to Seek Relief from the Board

Because the reimbursement agreements expressly reserve Dyno's rights to seek relief at the Board, there is no need for a court to determine whether the agreements are voidable before Dyno seeks relief. Dyno's unreasonable practice complaint is fully consistent with the existence and terms of the reimbursement agreements themselves.

To put it simply, Dyno does not contend that the reimbursement agreements are voidable. The agreements are irrelevant to the key issue of whether NuStar's requirement that Dyno pay millions of dollars constituted unreasonable practices in violation of 49 U.S.C. § 15501(a). It would make little sense for Dyno to have to go to court in order to confirm that it has the right to seek relief before the Board in a matter where the Board has exclusive jurisdiction. Dyno manifestly did not waive any rights. If NuStar somehow believed otherwise, NuStar could have filed its own court action, which it has not done. Furthermore, even in the rail context, it would be rather anomalous for the Board to defer ruling until the completion of other litigation that has not even commenced.⁵

⁵ This is not a case where a carrier filed a suit based on the existence of a contract before a shipper even filed or amended its complaint. *See, e.g., Ariz. Elec. Power Coop., Inc. v. BNSF Ry. Co.*, NOR 42113 (STB served April 23, 2009), at 3.

Again, at this stage of the proceeding, the Board must accept the facts as presented as true and viewed in the light most favorable to the complainant, here Dyno. *E.g.*, *State of Mont. v. BNSF Ry. Co.*, No. NOR 42124 (STB served Feb. 16, 2011) at 3. While NuStar has raised contract-based affirmative defenses, and as such, has the burden of proof on all such claims,⁶ it has failed to come close to meeting that burden, and it has failed to raise any legitimate jurisdictional questions. Yet the Board's decision, essentially assumes, prematurely and in error, that NuStar has met its burdens without even seeing or verifying any portion of the involved agreements. The Board then compounds the error by requiring *Dyno* to engage in a wild goose chase before unspecified state or federal courts before it can seek relief to which it is entitled to under the law. It is fundamentally unfair, a waste of resources, and ultimately fruitless to require Dyno to litigate and succeed on *NuStar's* hypothetical and illusory contract law affirmative defense claims prior to the Board asserting jurisdiction over Dyno's properly asserted Complaint allegations, especially where NuStar has failed to provide any supporting evidence.

D. In Agreeing to Cover NuStar's Restoration Costs, Dyno Acted Reasonably to Mitigate its Damages While Reserving Its Rights

The Board should understand that Dyno entered into the reimbursement agreements in large part to mitigate damages. The potential consequences from delaying the Waggaman Plant's commission would have been far larger. Dyno also consulted with

⁶ See, e.g., *Consolidation Coal Sales Co. v. Consol. Rail Corp.*, FD No. 34169 (STB served Feb, 28, 2002), 2002 WL 307860 at *3 ("as the party raising [an] affirmative defense, [the carrier] will bear the burden of going forward"); *Vulcan Materials Co. v. Alton & S. Ry. Co.*, No. 39639 (STB served Dec. 19, 1990), 1990 WL 300649 at *5 ("[Defendant] failed to lay an appropriate foundation for [its] affirmative [contract] defense It is appropriate that the ambiguity be resolved against the party raising it when that party has the burden of proof.")

NuStar regarding the possibility of seeking joint relief and clarification at the Board over right-of-way preemption matters, but NuStar flatly rejected Dyno's requests to engage in such a joint declaratory order initiative. With both parties specifically agreeing that Dyno had preserved its rights to bring an unreasonable practice case to the Board under the agreement, the Board should not abdicate its responsibilities to hear Dyno's claims.

Had NuStar been unwilling to allow Dyno to reserve its rights, then Dyno might have pursued other options, including asking the Board to intervene. However, NuStar did agree to the reservation of rights, and there is thus no need for Dyno to seek to have the agreements voided, as opposed to seeking to exercise a right that is expressly reserved under the agreements.

Nonetheless, the Board should consider that requiring Dyno to go to court here will incent parties to come to the Board as soon as any difficulty arises, rather than reach an interim working agreement, as Dyno and NuStar did here. If reaching an interim agreement makes later litigation more complicated, interim agreements will not be reached, and the Board will likely be required to intervene earlier and more often.

E. It Makes No Sense to Require Dyno to Go to Court Before Seeking Relief from the Board

In requiring Dyno to go to court first, the Decision appears to contemplate that Dyno should either: (a) have two bites at the apple of relief, once in court, and possibly another time at the Board itself, or (b) have to succeed in court before it would be able to proceed before the Board. Neither alternative makes any sense.

The ICCTA does not allow for private pipeline transportation contracts as it does for private rail transportation contracts. A court might well conclude that it has no

authority or jurisdiction to issue a decision that invades the Board's jurisdiction over either a common carrier pipeline or its unreasonable practices. A court would appear to lack the authority to order NuStar to issue a refund to Dyno, as that power resides with the Board. Furthermore, since the STB would retain the ability and duty to determine whether the practices embodied in any such contract are reasonable, it is unclear that the court could grant any final relief, which also begs the question whether Dyno would even have standing in court.

At a minimum, the Board should provide a coherent explanation for why Dyno needs to go to court first, specify what the court needs to determine, and explain why the Board cannot provide that determination. The failure to address these matters constitutes material error.

F. Requiring Dyno to Go to Court Before It Can Obtain Relief from the Board Will Be Wasteful and Inefficient

As discussed, the Board should also recognize that any court litigation is apt to be a very protracted odyssey that could easily take years, especially if appeals are required. It might be one thing if the Board were simply certifying a question to the {{ }} or even Louisiana state supreme court, but those states allow only federal appellate courts to certify questions to their supreme courts. Accordingly, the Board is directing the parties to embark on a process that will entail a complaint, answer or motion to dismiss, possible summary judgment and other discovery motions, depositions, arguments, a possible jury trial, appeals, *etc.*, in a matter where jurisdiction and standing are debatable. Furthermore, even if Dyno succeeds in that court litigation, victory would merely allow Dyno to resume its unreasonable practice complaint before the Board. Thus, besides placing fundamentally unfair and

unreasonable burdens on Dyno, the process prescribed by the Abeyance Order is colossally inefficient and wasteful.

In circumstances comparable to those which exist in this case, the agency has stated: “The potential for delay in deferring to a court’s jurisdiction is a serious concern and we must assure ourselves that the action is correctly taken.” *Toledo Edison Co. v. Norfolk & W. Ry. Co.*, 367 I.C.C. 869, 872 (1983). Moreover, the burden of persuading the Board that it is acting correctly if it holds the case in abeyance, lies solely with NuStar. *Id.* at 871.

When the undisputed facts and circumstances of the Dyno/NuStar relationship are properly examined by the Board pursuant to its responsibilities on reconsideration, it must conclude that NuStar has failed to meet the burden of persuasion and proof placed on it by the Board to secure an abeyance.

Moreover, the Abeyance Order will create uncertainty among shippers whether their remedy may reside at the Board or in court, or both, leading to an increase in both complaints and resulting motions by defendants to have matters held in abeyance while a shipper is forced to seek relief in court before it can return to the Board. The barriers to regulatory relief before the Board confronting Shippers, even in the absence of such additional roadblocks, are well known to the Board and already high enough. The unfortunate effect will be to increase the burdens upon parties, the Board, and the courts, which will undermine the efficient utilization of the resources of the Board, the courts, and the parties. It is also at odds with Pipeline Transportation Policy “to promote . . . adequate, economical, and efficient transportation,” “to encourage sound economic conditions in transportation,” and “to encourage the establishment and maintenance of reasonable rates for

transportation without unreasonable . . . or unfair or destructive competitive practices.” 49
U.S.C. § 15101(a)(2),(3), and (4).

CONCLUSION

For the foregoing reasons, on reconsideration, the Board should correct the material errors and mistakes identified above, reverse its Abeyance Order, deny NuStar’s Motion to Dismiss, and allow the case to proceed under Dyno’s proposed procedural schedule, or at least clarify its Decision in the manner set forth above.

Respectfully submitted,

DYNO NOBEL, INC. and
DYNO NOBEL LOUISIANA
AMMONIA, LLC



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Dated: April 7, 2017

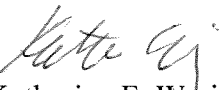
Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that this 7th day of April, 2017, I caused a copy of the foregoing document to be served by U.S. First Class Mail or by more expeditious means on the following counsel for Defendant NuStar Pipeline Operating Partnership, L.P.:

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Katherine F. Waring
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PUBLIC VERSION

EXHIBIT A
[REDACTED]

PUBLIC VERSION

EXHIBIT B
[REDACTED]