

**Dyno Nobel, Inc. and
Dyno Nobel Louisiana Ammonia, LLC,
Complainant**

v.

**NuStar Pipeline Operating Partnership, L.P.
Defendant**

**REPLY OF NUSTAR PIPELINE OPERATING PARTNERSHIP, L.P.
TO THE PETITION FOR RECONSIDERATION OF DYNO NOBEL, INC.**

Pursuant to 49 C.F.R. § 1115.3 of the Surface Transportation Board’s (“Board”) Rules of Practice, NuStar Pipeline Operating Partnership, L.P. (“NuStar”) replies to the Petition for Reconsideration (“Petition”) of Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC (individually and collectively, “Dyno” or “Complainant”) regarding the Board’s Decision issued on March 23, 2017 in the above-referenced matter (“Decision”) as follows:

NuStar urges the Board to deny the Petition, which fails to meet even the threshold requirements under the regulations governing petitions for reconsideration. No “new” evidence or “changed circumstances” have been presented. Dyno cannot show that the Decision involves material error, when it reaches no legal merits and is entirely procedural, and, moreover, is based on sound reasoning. Equally fatal to the Petition is the fact that the newly-submitted documents only support the Board’s Decision, because it shows that there was a written contract that is best assessed under state law contract principles by a court.

Dyno's Petition confirms other key facts, particularly that the Fortier Lateral had long been inactive and that NuStar needed to incur costs to reactivate it for serving Dyno's plant.

which NuStar would not have agreed to do but for Dyno's agreement to pay. Dyno continues to maintain, despite these facts and compelling Supreme Court and other judicial precedent, that NuStar had an obligation to reactivate the Fortier Lateral. That position is manifestly incorrect, and in light of the additional documents produced by Dyno, would have justified summary dismissal of the complaint, alone.

Strikingly, Dyno's Petition acknowledges that requiring payment was acceptable – Dyno only claims that it should not be obligated to pay amounts higher than the initially-quoted amounts. In other words, requiring a shipper to pay reactivation costs was not an unreasonable practice, only that Dyno thought it should not have to pay more than a preliminary estimate. This claim is one sounding in contract, not in the Interstate Commerce Act ("ICA").

The Petition only underscores the propriety of the Board's conclusion that the contract issues should be addressed by a court, not by the Board, and fails to support any of the alleged policy grounds for reconsideration. Indeed, the most compelling policy result of adopting Dyno's position would be that pipeline common carriers would not attempt to undertake expenses to provide or restart service to shippers, even with their express contractual agreement to pay, knowing that the shippers could turn around and demand that this Board relieve them of the expenses incurred solely at their request and for their benefit. The Petition should be denied.

II. ARGUMENT

A. DYNOS PETITION DOES NOT MEET THE BOARD'S REQUIREMENTS.

Dyno has filed a Petition, but its Petition does not conform to the requirements of 1115.3(b). Specifically, Dyno's Petition must meet one of the following two criteria:

- (b) The petition will be granted only upon a showing of one or more of the following points:
 - (1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

Because Dyno's Petition does not meet the specifications of either 1115.3(b)(1) or 1115.3(b)(2), the Board should find that Dyno failed to meet the heavy burden associated with a petition for reconsideration and should therefore deny Dyno's Petition.

Indeed, the only evidence that Dyno has presented in its Petition is not new and does not show changed circumstances, as required by 1115.3(b)(1). Dyno presents one of five contracts it signed in 2014 and some meeting minutes that it has possessed since before the inception of this matter. These documents should have been filed as part of Dyno's original complaint, as they are directly relevant to the Board's ability to assess the merits of Dyno's claims. Introducing the contract documents into the record at this late stage, in response to the Board's Decision finding that contract issues as to interpretation and enforceability exist that must be addressed by a court, does not constitute a "changed circumstance" under 1115.3(b)(1). The Board generally does not consider new issues raised for the first time on reconsideration where those issues could have and should have been presented in the earlier stages of the proceeding. *See E.I. Dupont De Nemours and Co. v. Norfolk Southern Ry. Co.*, 2015 STB Lexis 424, *6 (2015); *Tex. Mun. Power Agency v. Burlington N. & Santa Fe Ry.*, 7 S.T.B. 803, 804 (2004). The belated introduction of documents in Dyno's possession prior to the filing of its complaint is facially insufficient to meet Dyno's burden under 1115.3(b)(1).

Dyno also fails to show that the Board's Action included a "material error," as required by 1115.3(b)(2). The Decision contains no merits determination, rather, it simply postpones any decision until the substantive state law issues are resolved. The order is entirely procedural in nature and well within the Board's discretion. *See, e.g., Gov. of Territory of Guam v. Sea-Land Service, Inc., American President Lines, LTD, and Matson Navigation Co. Inc.*, 2007 STB LEXIS 508, *15 (2007) ("Administrative agencies have broad discretion to structure their

proceedings.”). An abatement of the kind ordered by the Board cannot be material error because no decision has been made.

It seems inconsistent for Dyno to submit a contract at this late hour while at the same time arguing the Board committed material error by determining that the dispute really arises from that very contract and that the dispute should be properly heard elsewhere. The documents Dyno submitted only support the Board’s conclusion that there are key issues of contract associated with the arrangement between Dyno and NuStar that must be addressed by a court of general jurisdiction.

Dyno’s Petition does not meet its onerous burden, and therefore it should be denied.

B. THE ADDITIONAL EVIDENCE PRODUCED BY DYNO SHOWS THAT THE BOARD’S DECISION DOES NOT CONTAIN ANY MATERIAL ERRORS.

The newly produced documents Dyno included in its Petition only support NuStar’s arguments in its Answer and Motion to Dismiss. In light of this evidence, the Board should affirm its prior determination that an agreement exists between the parties for the reactivation of the dormant Fortier Lateral and that the subject of Dyno’s dispute with NuStar sounds in contract law.

1. Dyno’s Documents Show a Contractual Agreement Exists

Dyno contends in its Petition that this matter must come before the Board because it is an alleged unreasonable practice and not a contract claim. Dyno specifically contends that no agreement on payment of costs existed during the early discussions relating to the reactivation, and that subsequent written agreements were made under duress. (Petition, pp. 8; 12). However, the documents produced by Dyno show that: (a) NuStar **only** agreed to undertake the expenses of restoring the Fortier Lateral to service in return for Dyno’s agreement to pay the costs of doing so; (b) the cost overruns were expressly contemplated by the parties; and (c) Dyno and NuStar

agreed to address any cost overruns through future negotiations and agreements. (Petition, p. 8). Thus, the documents Dyno produced not only show that there was an agreement to cover the initial costs of reactivation as well as an intention to reach an agreement if there was a cost overrun, but that when a cost overrun occurred, the parties would follow a certain protocol to address such overruns.

Dyno's partial and selective submission of even these additional documents masks the full range of actions by the parties that support NuStar's position and which should be assessed by a court under contract law principles. Dyno has failed to disclose a number of highly pertinent facts for contractual purposes, including the following:¹

- as to each of the agreements, Dyno was specifically consulted about the particular costs that were incurred before any agreement was reached.
- in some instances, Dyno was provided with a choice between faster and more expensive, or cheaper and potentially slower alternatives, and Dyno opted for the faster and more expensive approach.
- Dyno actively engaged in the decision making process associated with how costs were incurred.

Of course, Dyno's Petition omits these facts – which are well known to Dyno and which are precisely the types of facts that a court would assess in weighing Dyno's claims that it lacks a contractual obligation – despite having signed a contract and made payments after NuStar fulfilled its obligations.

Dyno's Petition and the Reimbursement Agreement Dyno has provided as part of its Petition simply re-affirm that the Board properly found that the heart of Dyno's dispute is contractual in nature and that a court of general jurisdiction is the proper venue for adjudicating

¹ NuStar includes as **HIGHLY CONFIDENTIAL** Appendix A to this pleading additional Reimbursement Agreements between NuStar and Dyno addressing the costs associated with the reactivation.

whether the Reimbursement Agreements were proper, binding and/or voidable.² No material error exists as to the Board's conclusion that this controversy arises in contract law.

2. Dyno's Evidence Shows that NuStar Was Not Offering Service to the Public on the Fortier Lateral

The newly produced meeting minutes in Exhibit A of Dyno's Petition also confirms that the Fortier Lateral has long been inactive, NuStar was not providing service, and NuStar could not offer service on the Fortier Lateral at the time it entered into the Reimbursement Agreements. Dyno's Petition relies on the erroneous contention that NuStar somehow offered, or committed itself to offer, interstate transportation service on the Fortier Lateral Branch in 2012, which then subjected it to an unreasonable service complaint associated with the reactivation of the Fortier Lateral. Dyno's contention is refuted by both the applicable law and by the very facts that it has introduced in the Petition.

Dyno's arguments in this proceeding are premised on its belief that NuStar's Fortier Lateral Branch was offering public transportation service at the time Dyno sought to obtain service from NuStar – or that it was required to offer such service, even though the line had been inactive for almost two decades. Only if NuStar had common carrier obligations to offer service on the inactive and then-unusable Fortier Lateral would Dyno have any potential claim before the Board, rather than a court of general jurisdiction. In contrast to rail common carriers, which are bound by their certificate, Supreme Court and subsequent judicial and administrative precedent establish that a pipeline common carrier, such as NuStar, has no obligation to continue

² NuStar notes that while Dyno argues that this matter must be decided by the Board because only the Board can provide refunds, (Petition, p. 14), a determination on damages for breach of contract is a standard undertaking in a court of general jurisdiction. *See, e.g., Formosa Plastics Corp. United States v. Presidio Eng'Rs & Contrs.*, 960 S.W.2d 41 (Tex. 1998).

service on any segment of pipeline.³ Pipeline carriers, therefore, have the ability to idle a pipeline and are not obligated to reactivate service.

In fact, Dyno admits that when it approached NuStar with the project proposal, NuStar was not offering service on the Fortier Lateral segment at the time. Dyno's evidence shows it knew at the time it entered into the Reimbursement Agreement with NuStar in 2012, the project would reactivate a long-dormant pipeline. Specifically, on page 8 of its Petition, Dyno quotes language indicating that when the parties met to discuss the project, Dyno was advised that the lateral "had been idle for ~15 years." (Petition, p. 8). Further, the initial discussion between Dyno and NuStar reflects that it was not even possible for NuStar to provide service on the Fortier Lateral until significant engineering work was undertaken in order to assess the condition of the line. Further, as NuStar noted in its Answer, the origin and destination points for the Fortier Lateral were not included in the Company's tariff, and therefore it was not offering service on the Fortier Lateral pursuant to the rules of its tariff. (Answer, ¶¶ 12; 29).

Dyno acknowledges that it agreed to pay NuStar to reactivate the line. (Petition, pp. 8, 9, 12-13). Dyno's documents show that NuStar clearly informed Dyno that it would only reactivate the line if Dyno was willing to reimburse it for the expenses associated with reactivating the line. Hence, at the time Dyno entered into a Reimbursement Agreement to pay for reactivation, the line was not in service and therefore NuStar had no common carrier obligation. Dyno notes that neither party sought Board relief or preemption on the right-of-way issues. (Petition, p. 13). This is because NuStar has consistently taken the position – a position it shared with Dyno – that it had no common carrier obligation and duty to serve Dyno on the Fortier Lateral prior to the time that reactivation was complete. Consequently, "preemption" was not relevant or available.

³ NuStar Motion to Dismiss at pp. 8-11.

As Dyno's only support for its claim that the Board has jurisdiction over this case, it points to the reservation of rights language in the cost allocation Reimbursement Agreements. (Petition, pp. 11-12). An example of one of these Reimbursement Agreements was included as Exhibit B to the Petition. The reservation of rights, a single sentence vaguely referencing common carrier rights, cannot create Board jurisdiction at a point prior to when NuStar could actually offer common carrier service to Dyno. Dyno had no legal right to force NuStar to activate the line and provides no basis for voiding the contract or seeking relief from the Board.

3. Dyno's Evidence Clearly Shows that its Claim Arises, Not in an Unreasonable Practice, but in Concepts of Contract Law.

Dyno's arguments in its Petition only further clarify that its dispute with NuStar is one that arises in contract. Based on the evidence provided by Dyno, the Board would be fully within its authority to reject Dyno's complaint, because Dyno's claim relies on the incorrect presumption that NuStar had a duty to provide service. However, Dyno has not shown how a duty to provide service can attach to a pipeline that is not physically or legally capable of providing service and has not provided service for more than 15 years. The Board is fully justified, at a minimum, in affirming its determination in the Decision that there are important contract issues that must be addressed by a court of general jurisdiction.

Dyno's additional documents remove materially any dispute as to the basic transaction between Dyno and NuStar. Both parties agree that the Fortier Lateral was not active, and would need to be reactivated in order for NuStar to provide service to Dyno. (Petition, p. 8; Exhibit A). NuStar provided a cost estimate of +/- 15% of \$980,000 for the work required to reactivate the Fortier Lateral. (Petition, p. 8; Exhibit A). Dyno agreed to pay that amount, and to "discuss and resolve" costs above that amount. (Petition, p. 8; Exhibit A). When additional costs above the

original estimate were identified, Dyno and NuStar discussed what those cost overruns would be, and reached agreements on payment for those costs. (*See, e.g.*, Exhibit B; Reply Appendix A).

Despite Dyno’s contention on page 8 of its Petition that “there simply is no agreement of any type or form...to cover any and all costs of line service reactivation,” Dyno emphasizes that the parties would reach further agreements on cost overruns and concedes that it “entered into...reimbursement agreements.” (Petition, p. 12). In explaining these further agreements on cost, Dyno argues that it was done to “mitigate” its damages. (Petition, p. 12). The concept of mitigation of damages is one that arises in contract law, and not as part of an unreasonable practice claim.

Dyno has provided no evidence and makes no clear claim to support its underlying contention that NuStar had a common carrier duty to Dyno that somehow invalidates these specific contractual undertakings. NuStar’s Fortier Lateral was not in operation in interstate service at the time Dyno agreed to pay for the reactivation of the line. (Answer, ¶ 12). NuStar has no obligation at law under the Interstate Commerce Act to start or discontinue service, or to file a formal abandonment – as the Decision itself acknowledged, when it noted that “[t]he Board does not have entry and exit licensing authority over such pipelines.”⁴ In order for NuStar to have any service related obligations, it must be offering service to the public. NuStar pointed in its Answer to the many ways in which it clearly was not offering service to the public on the Fortier Lateral, including: the many years of dormancy of the line; the lack of an origin point on the tariff; the existence of a nitrogen blanket; the extinguishment of right-of-way based on Louisiana state law regarding non-use; and the extensive time and engineering required to provide Dyno with service. (Answer ¶¶ 12-14; 18; 29). Dyno has not pointed to any facts supporting its contention that NuStar had a duty to provide common carrier service at the point

⁴ Decision, fn. 3.

where negotiations on reactivation were taking place. Without such facts, Dyno has failed to support its burden of showing an unreasonable practice complaint could be maintained.⁵

Critically, by rejecting Dyno's claims in its Petition, the Board will not have denied Dyno the opportunity to seek relief. Rather, the Board is merely giving Dyno the opportunity to pursue the dispute in a proper venue so a court can adjudicate its claims of duress and voidability.

Based on the exhibits to Dyno's Petition, Dyno has shown that the dispute before the Board is contractual in nature and is better suited for hearing in a state court. Thus, there is no material error in the Board's Decision. Dyno's Petition should be denied.

C. DYNOS UNREASONABLE PRACTICE CLAIM IS FATALLY FLAWED BECAUSE IT CONCEDES THAT RESTART COSTS COULD HAVE BEEN ASSESSED AND ARE THUS NOT INHERENTLY AN UNREASONABLE PRACTICE.

In its Petition, Dyno argues the Board should address NuStar's alleged unreasonable practice. (Petition, pp. 5-7). However, Dyno does not challenge NuStar's practice of requesting costs in aid of reactivation of its line. Rather, the arguments made by Dyno in its Petition show that Dyno *only* contests the *amount* properly to be recovered by NuStar. The Board properly has recognized that Dyno has raised a claim that arises in contract, rather than an unreasonable practice claim within the Board's jurisdiction.

Dyno admits that it agreed to pay for re-activation costs of more than \$1,000,000. (Petition, p. 8).⁶ Further, Dyno quotes and emphasizes the following language from the meeting minutes, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END HIGHLY**

⁵ Dyno makes various arguments in its Petition that would place the burden of proof in this proceeding on NuStar. Those arguments are incorrect. Dyno, as the complainant, bears the burden in this proceeding to make a *prima facie* showing that the Board's jurisdiction is proper and that its claims have merit. *See, e.g., North America Freight Car Assoc., et. al. v. BNSF Ry. Co.*, 2007 STB LEXIS 38, *10-11 (2007) ("the burden has consistently been placed on complainants to prove the merits of an unreasonable practice claim").

⁶ The original agreement language included a cost projection of +/- 15% of around \$980,000. Therefore, the total original cost estimate was between \$833,000 (\$980,000-\$147,000) and \$1,127,000 (\$980,000+\$147,000).

CONFIDENTIAL] (Petition, p. 8). If the Board accepts Dyno’s own position as true for the purposes of making a determination, it must conclude that Dyno’s dispute is not that the practice of paying the costs of the reactivation is, in itself, an unreasonable practice.

Dyno’s dispute is not about whether it agreed to pay some costs in aid of construction, but rather whether it agreed to pay for the entirety of the costs of reactivation of the line once those costs exceeded the original estimate. Specifically, Dyno notes that “newly discovered problems” associated with right of way acquisition caused “total pipeline reactivation costs to dramatically jump from \$980,000 +/- 15% to ultimately over \$10,000,000” (Petition, p. 9). Further, Dyno does not allege that NuStar has charged it for more than the actual full cost of the reactivation (*i.e.*, that the charges were falsely inflated), but rather only those costs associated with the right-of-way acquisition that was necessary in order to place the pipeline back into service. Dyno is specifically challenging the scope of the agreement between Dyno and NuStar – and this challenge arises in the various contracts between the parties, including those contracts Dyno has already provided to the Board.

Dyno has not argued that it believed that NuStar’s requirement of financial contribution in order to reactivate the line is, in and of itself, an unreasonable practice. Instead, according to Dyno, it agreed to the approximately \$1,000,000 cost estimate associated with reactivation of the line, but should not be required to pay the full actual amount of reactivation of the line of \$10,000,000. (Petition pp. 8-9; Exhibit A). Dyno does not attempt to explain why \$1,000,000 is a reasonable practice, but \$10,000,000 is inherently unreasonable despite reflecting actual costs. However, only when the actual costs began to exceed the original estimate, and where Dyno specifically authorized and agreed to pay the additional costs, did it begin to include the “reservation of rights” language it points to in its arguments on pages 9 and 10 of its Petition.

This reservation of rights language does not undermine the original agreement to pay around \$1,000,000 of reactivation costs, and should not be accepted by the Board as a way for Dyno to create a claim that requiring reactivation cost payment is an unreasonable practice.

Dyno's Petition does not show that the Board has made a material error based on fact or law regarding its determination that Dyno's dispute is primarily a contract claim. Dyno's Petition should, therefore, be denied.

D. THE BOARD IS NOT IN THE BEST POSITION TO EFFICIENTLY ADJUDICATE THE CRITICAL CONTRACT ELEMENTS DISPUTED BY DYNNO.

Dyno's argument that it did not agree to pay the additional costs for right-of-way is fundamentally a contract claim properly addressed by a court of general jurisdiction, as the Board previously determined. Dyno's Petition only further illustrates the numerous layers of fact, contract law, and property law, that must be addressed in order for there to be a finding in Dyno's favor. The Board correctly determined that it was not in the best position to decide these issues, and should affirm its prior decision.

Dyno alleges that a court of general jurisdiction would not have authority to decide issues relating to "private pipeline transportation contracts." (Petition, pp. 13-14). However, this case does not involve private pipeline transportation contracts. It involves a contract for reactivation of a pipeline and for financial costs associated with necessary physical and legal work in order to make the pipeline operable. Dyno has not challenged anything relating to the transportation after the point at which service commenced. The entirety of Dyno's challenge is to the actions and Reimbursement Agreements between the parties which were necessary to reach the point where the tariff would be applicable (*i.e.*, after service commenced). Simply put, there is nothing in this pre-service arrangement that prevents a court of general jurisdiction from fully assessing the responsibility of the parties to be bound by the terms of their Reimbursement Agreements.

As noted by Dyno on page 10 of its Petition, this case involves layers of contract law issues, choice of law provisions, and state specific claims. While Dyno is mistaken in its claim that it is “material error” that the Board did not recognize the specific operations of state and federal courts in its Decision, (Petition, pp. 10-11), that complexity should only serve to affirm that a court of general jurisdiction would be the more proper forum for this proceeding. However, the discussion of which law is applicable in determining the outcome of the contract and property claims is merely dicta in the Board’s Action, because it had no impact on the rights of the parties to eventually determine whether [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] or Louisiana law applies, and therefore could not constitute a “material error.” See, e.g., *Canadian National Ry. Co. & Grand Trunk Corp.*, 2015 STB LEXIS 154, *7 (2015) (material error must “mandate a different result”); *E.I. Dupont De Nemours and Co. v. Norfolk Southern Ry. Co.*, 2015 STB LEXIS 424, *45 (2015) (issues not critical to the outcome of the decision do not constitute material error).

In light of the Board’s Decision that this dispute involves contract claims to be addressed by a court, on April 18, 2017, NuStar filed a suit for declaratory judgement with the Judicial District Court in Texas at Cause No. 2017CI07109, *NuStar Pipeline Operating Partnership L.P. v. Dyno Nobel Louisiana Ammonia, LLC and Dyno Nobel, Inc.*

E. DYNO’S POLICY ARGUMENTS SHOULD BE REJECTED.

Dyno concludes its Petition by arguing that the Board’s Decision would have adverse policy implications for future complainants. (Petition, pp. 14-16). The Board should reject Dyno’s policy arguments because they are based on inaccurate representations of the facts of this particular dispute and because Dyno is not precluded from seeking full relief for its claims.

Dyno’s policy claims are premised on the facially inaccurate premise that the Board’s Decision creates a hardship to Dyno. This is incorrect for two reasons. First, the Board is doing

nothing more than giving Dyno the right to litigate the validity of the contract issues it has raised in a more proper venue capable of fully assessing the contract issues. Second, the Board's Decision held the unreasonable practice claims in abeyance, which would still allow Dyno to proceed in this forum if there are any claims left to pursue after a decision on the contract claims. The Board's Decision is generous in providing Dyno numerous options to adjudicate its claims.

More critically Dyno's discussion in its Petition of its approach to its Reimbursement Agreements with NuStar suggests that Dyno intended to act in bad faith. Dyno appears to have agreed to the contracts, and included the reservation of rights language in each contract, with the avowed intent of inducing NuStar to take the necessary steps to reactivate the line – which NuStar had no ICA/ICCTA duty to do – while later seeking to use the Board's procedures to claw back its payments for work undertaken solely for its benefit. Dyno's approach to contract in this instance verges on the tortious – it entered into numerous agreements worth millions of dollars with the intent to dispute the validity of the agreement (noting, again, that it does not dispute the underlying costs incurred by NuStar). Dyno never sought the Board's input or relief during the time these negotiations were underway.⁷ This approach negates any claims of injustice or hardship made by Dyno now. Approving Dyno's Petition would create public policy that encouraged bad faith negotiations.

Finally, in discussing the public policy implications of the Board's Action, Dyno fails to discuss the facts associated with the eventual product movements on the Fortier Lateral. As indicated previously in this Reply, the parties do not dispute that the line was inoperable and that a significant sum of money and engineering work was required to make the line service ready. What Dyno does not discuss is that NuStar did not benefit financially from the reactivation of the

⁷ Dyno acknowledges that it could have sought Board clarification during the planning stages of this project, but it did not do so. (Petition, pp. 12-13).

Fortier Lateral. The transaction was revenue and volume neutral – Dyno simply shifted volumes it was transporting on other parts of NuStar’s system to the Fortier Lateral. Therefore, NuStar never had any financial reason to pay the cost to reactivate the line, since it would have no additional revenue by which to recover the costs. But for Dyno’s agreement to pay the full associated costs of reactivation, NuStar would not have agreed to this project and would never have had a motive to agree to do so. Dyno now claims that despite the existence of a no-gain transaction, and the numerous assurances and agreements made by Dyno that it would pay for the costs of reactivation, it may return to this forum to seek an Order shifting the project costs back to NuStar. If any policy implication can be drawn from this proceeding, it would be that if the Board agrees with Dyno, then any pipeline common carrier subject to the Board’s jurisdiction would become reluctant to agree with shippers’ requests for building or restoring facilities for fear they would be unenforceable if challenged. That policy concern should outweigh Dyno’s unsupported claims of injustice and harm.

III. CONCLUSION

For the foregoing reasons, NuStar respectfully requests that the Board reject Dyno's Petition for Reconsideration and affirm its Decision. In the alternative, the Board could determine that in light of the additional evidence presented by Dyno, no controversy exists upon which the Board has exclusive jurisdiction, and therefore dismiss the Complaint in its entirety with prejudice, for the reasons provided above and in NuStar's previous Answer and Motion to Dismiss.

Respectfully submitted,

By: _____/s/

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Dated: April 27, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2017, I caused a copy of the foregoing Reply of NuStar Pipeline Operating Partnership, L.P. to the Petition for Reconsideration of Dyno Nobel, Inc. to be served by U.S. First Class Mail or more expeditious means on the following counsel for Complainant Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC:

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HIGHLY CONFIDENTIAL

APPENDIX A

[REDACTED]