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Office of Proceedings

AUG 01 2003

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Public Record

August 1, 2003

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: STB Docket No. 42081
Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of Kaneb Pipe Line Partners, L.P.'s Answer to the Complaint. A diskette containing the text of the Answer in Microsoft Word and applicable exhibits in Adobe Acrobat is also enclosed.

Please acknowledge receipt of the enclosed by stamping and returning to our Paralegal the enclosed duplicates of this filing.

Sincerely,

Kathrine L. Henry

Kathrine L. Henry

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DYNO NOBEL INC.,
Complainant

v.

KANEB PIPE LINE PARTNERS, L.P.
Defendant

Docket No. 42081



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**KANEB PIPE LINE PARTNERS, L.P.'S
ANSWER TO THE COMPLAINT**

Pursuant to 49 C.F.R. § 1111.4 of the Surface Transportation Board's ("Board") Rules of Practice, Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb")¹ answer the Complaint of Dyno Nobel Inc. ("Dyno Nobel" or "Complainant") as follows:²

Introduction

1. Paragraph 1 alleges legal conclusions or analysis as to which no admission or denial is required.
2. Kaneb denies Paragraph 2.
3. Kaneb opposes the bifurcated proceeding requested in Paragraph 3.
4. Paragraph 4 comprises a request for relief, as to which no response is required. Kaneb denies, however, that Dyno Nobel is entitled to the requested relief.

¹ Complainant and Defendant have stipulated that Kaneb Pipe Line Operating Partnership, L.P. is included as a defendant.

² Numbered paragraphs correspond to the numbered paragraphs of the Formal Complaint, and references to "Paragraph [X]" refer to paragraphs as numbered in the Complaint.

Parties

5. Kaneb lacks information to form a good faith belief regarding the truth of the matter asserted in the first three sentences of Paragraph 5, and therefore denies them. Kaneb further denies that the only financially viable means Dyno Nobel has of transporting anhydrous ammonia (“AH”) from the AH production areas in Louisiana to Dyno Nobel’s Louisiana, Missouri facility (the “LOMO facility”) is via Kaneb’s pipeline. Moreover, Kaneb denies that it has market dominance over Dyno Nobel’s AH shipments.

6. Kaneb denies the last section of the last sentence in Paragraph 6 to the extent that it includes the October 25, 2000 letter agreement between Koch Pipeline Company, L.P. (“Koch”) and Dyno Nobel, which is referenced in the Complaint as a “rate parity agreement” or “parity-maintenance agreement.” Kaneb admits the remaining averments in Paragraph 6.

Facts Leading to the Instant Dispute

7. Kaneb lacks information sufficient to form a good faith belief regarding the truth of Paragraph 7, and therefore denies it.

8. Kaneb admits that the Board issued a decision on May 9, 2000, in Docket No. 41685, and further states that the decision speaks for itself.

9. Kaneb lacks information sufficient to form a good faith belief regarding the truth of Paragraph 9, and therefore denies it.

10. Kaneb lacks information sufficient to form a good faith belief regarding the truth of Paragraph 10, and therefore denies it.

11. Kaneb lacks information sufficient to form a good faith belief regarding

the truth of Paragraph 11, and therefore denies it.

12. Kaneb states that with respect to the first sentence of Paragraph 12, the United States Court of Appeals for the D.C. Circuit's July 27, 2001 decision speaks for itself. In the second sentence of Paragraph 12, Dyno Nobel purports to characterize the effect of the July 27, 2001 decision. Kaneb denies Dyno Nobel's characterization of the July 27, 2001 decision, and states that the referenced decision speaks for itself.

13. Kaneb admits the first sentence in Paragraph 13. Kaneb denies the last sentence in Paragraph 13 to the extent that it includes the October 25, 2000 letter agreement between Koch and Dyno Nobel, referenced in the Complaint as a "rate parity agreement" or "parity-maintenance agreement."

14. Kaneb admits that it published tariff sheets on or about March 10, 2003, as referenced in the first sentence of Paragraph 14, but denies Dyno Nobel's characterization that those tariff sheets imposed "substantial" increases in "virtually all of its common carrier rates." Furthermore, the first sentence contains legal conclusions as to which no response is required. As to the second and third sentences of Paragraph 14, Kaneb denies Dyno Nobel's characterization of the rates delineated in Kaneb's tariff sheets, and states that the tariff sheets speak for themselves. Kaneb admits the last sentence of Paragraph 14.

15. Kaneb admits that Dyno Nobel notified Kaneb regarding the March 2003 rate increases. The letter attached hereto as Exhibit A conveys Dyno Nobel's legal conclusions or analysis and speaks for itself. As to the last sentence of

Paragraph 15, Kaneb forwarded a letter response to Dyno Nobel on April 24, 2003. That letter is attached as Exhibit B and speaks for itself.

Count I – Violation of Contract Rate Policy

16. Paragraph 16 alleges legal conclusions or analysis as to which no admission or denial is required. Kaneb further states that the referenced Staggers Act and the quoted portions of the Change of Policy, Railroad Contract Rates decision speak for themselves. Kaneb admits the last sentence.

17. Paragraph 17 alleges legal conclusions or analysis as to which no response is required. Kaneb further states that the decision in Docket No. 41685 speaks for itself.

18. Kaneb denies Paragraph 18. Footnote 3 contains Dyno Nobel's characterization of the decisions cited therein and contains legal conclusions and analysis to which no response is required. The decisions cited in footnote 3 speak for themselves. Kaneb denies the last sentence in footnote 3.

19. Kaneb denies Paragraph 19.

20. Paragraph 20 comprises a request for relief, as to which no response is required. Kaneb denies, however, that Dyno Nobel is entitled to the requested relief.

Count II – Unreasonable Discrimination

21. Kaneb denies Dyno Nobel's characterization and computation of the effect of the rates effective April 1, 2003, contained in the first two sentences of Paragraph 21. Kaneb denies the last sentence of Paragraph 21. Kaneb denies the allegation in footnote 4 that the LOMO rate, prior to April 1, was \$12.50.

22. Kaneb denies Dyno Nobel's characterization and computation of the effect of the rates effective April 1, 2003, contained in the first three sentences of Paragraph 22. Kaneb denies the last two sentences of Paragraph 22.

23. Paragraph 23 contains legal conclusions to which no response is required.

24. Kaneb lacks information sufficient to form a good faith belief regarding the truth of the first five sentences in Paragraph 24, and therefore denies them. Kaneb denies the last sentence in Paragraph 24.

25. Paragraph 25 contains legal conclusions and states Dyno Nobel's expectations regarding evidence yet to be submitted, to which no response is required.

26. Paragraph 26 comprises a request for relief, as to which no response is required. Kaneb denies, however, that Dyno Nobel is entitled to the requested relief.

Count III – Rates Exceeding Levels Permitted under CMP

27. Kaneb denies Paragraph 27.

28. Paragraph 28 comprises a request for relief, as to which no response is required. Kaneb denies, however, that Dyno Nobel is entitled to the requested relief.

AFFIRMATIVE DEFENSES

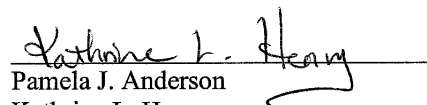
A. The Complaint fails to state a claim upon which relief can be granted.

REQUESTED RELIEF

WHEREFORE, in consideration of the above and foregoing, Kaneb respectfully requests that the Board

1. Dismiss the Complaint with prejudice;
2. Award Kaneb its costs and fees incurred in defense of this action;
and
3. Grant Kaneb such additional relief as it deems proper.

Respectfully submitted,


Pamela J. Anderson
Kathrine L. Henry
Angela A. Freeman
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
7th Floor
Washington, D.C. 20007-3877
Phone: (202) 298-1800
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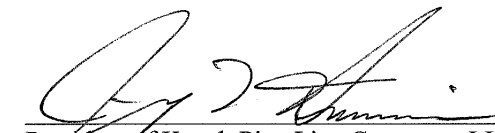
Attorneys for Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dated: August 1, 2003

VERIFICATION

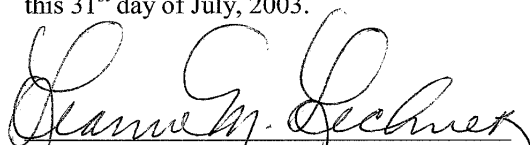
STATE OF KANSAS)
) ss:
COUNTY OF)

Jimmy Harrison, being duly sworn, deposes and says that he has read the foregoing Answer, knows the contents thereof, and that the facts stated therein are true and correct to the best of his knowledge, information and belief.



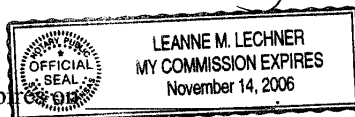
President of Kaneb Pipe Line Company, LLC
The Sole General Partner of Kaneb Pipe Line
Operating Partnership, L.P.

Subscribed and sworn to before me
this 31st day of July, 2003.



Notary Public in and for the State of Kansas

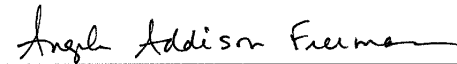
My Commission expires



CERTIFICATE OF SERVICE

Pursuant to Rule 1104.12 of the Surface Transportation Board's Rule on Service of Pleadings and Papers, I hereby certify that I have this day served a copy of the foregoing document by first-class U.S. mail, postage prepaid, on all parties of record in this proceeding, Docket No. 42081.

Dated at Washington, D.C., this 1st day of August 2003.


Angela Addison Freeman

C. Michael Loftus, Esq.
Donald G. Avery, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036-3003
Counsel for Dyno Nobel Inc.

EXHIBIT A

Dyno Nobel North America

DYNO
Dyno Nobel

CONFIRMATION COPY

VIA FACSIMILE

Mr. Jimmy L. Harrison
Kaneb Pipe Line Partners
7340 West 21st North, Suite 200
Wichita, KS 67205

Your ref.:

File no.:

Date: 1 April 2003

DYNO NOBEL INC.
Corporate Office
Eleventh Floor
Crossroads Tower
Salt Lake City, Utah
84144-0103 USA

Tariff Rates

Dear Mr. Harrison:

Telephone: 801-364-4800
Fax: 801-328-6532

Robert A. Bingham
Vice President
Legal and
Commercial Services

www.dynonobel.com

Thank you for your telephone calls yesterday to discuss our objection to the tariff rate increases as they apply to Dyno Nobel Inc. As we discussed, we feel strongly that we have contractual and statutory protection that prohibits Kaneb from imposing an effective 68% increase in rates to our LOMO facility.

You indicated that Kaneb would be willing to roll back the increase in rates and phase it in over a two-year period, if we would agree to accept the increase by the end of that period. We are unwilling to accept this offer, both for economic reasons and because it would require us to relinquish our legal rights.

We wish to summarize in writing the basis of our legal position and would hope that you would reconsider your position in view of this summary. We would recommend that you have legal counsel review this matter in hopes of avoiding expensive and protracted legal proceedings.

1. Contractual Rights. The proposed increase in the LOMO rates is unlawful because DNI and Koch Pipeline Company, Kaneb's predecessor, agreed in a letter agreement dated October 25, 2000 (copy attached), to maintain parity of the LOMO rates to the rates prescribed in the May 3, 2000, STB decision (Docket No. 41685). Further, the current proposed increases in the prescribed rates are null and void (before Kaneb can increase a prescribed rate it must obtain an STB Order lifting or modifying the prescription; *see* 49 U.S.C. § 15503(a)). In the absence of an increase in the prescribed rates -- and in particular, the El Dorado rates -- any increase in the LOMO rates would violate the above-referenced agreement and constitute an unreasonable practice under STB and ICC precedents (*see Annual Volume Rates on Coal - Wyoming to Flint Creek, Arkansas*, 364 I.C.C. 753 [1981]).

LG10442

Mr. Jimmy L. Harrison
1 April 2003
Page 2

DYNO
Dyno Nobel

Even if, and when, STB lifts the Docket No. 41685 prescription, the proposed increase in the LOMO rates would violate our agreement because they exceed the proposed increases in El Dorado rates, on both an absolute and percentage basis.

2. Statutory Rights. The increase is also unlawful because it is grossly and unreasonably discriminatory, under the tests summarized in the May 3, 2000 decision. In particular:

The disparate treatment in the effective rate increase of DNI as compared to EDC is manifest. Kaneb is the source of both the favored and disfavored rates, and DNI will suffer significant competitive harm from discrimination in favor of EDC, its direct competitor, which could lead to a closure of DNI's LOMO operations.

DNI's LOMO facility and EDC's El Dorado, Arkansas, facility are direct competitors in the Midwest markets for ammonium nitrate. Although EDC already enjoys more favorable rates than DNI does, DNI has been able largely to offset that cost advantage through management and production efficiencies, and thereby has been able to remain competitive with EDC.

When Koch filed its rate increases in 1996, DNI did not immediately challenge them, as CF Industries and Farmland did, because the increases were borne by both EDC and DNI, and the increases were not grossly disproportionate. When, however, CF Industries won its case at the STB and obtained a roll-back of the rate increase to EDC, DNI felt it had no choice but to demand the same treatment, for otherwise the resultant disparity between DNI's increased rate and EDC's now-reduced rate would have put DNI at a severe cost disadvantage despite its other cost efficiencies. Koch recognized this, and agreed to restore and maintain the parity that had previously existed between the EDC and DNI rates. The new increase would enlarge the rate disparity between favored EDC and disfavored DNI to an even greater degree than that faced by DNI in 2000.

In order to resolve this rate issue, DNI is willing to agree to a preservation of the competitive "status quo" and not to protest any increase in its existing rates that does not exceed the lesser of (a) in absolute dollar terms, the simultaneously-imposed and collected increases in the El Dorado rate, or (b) in percentage terms, the weighted average of the increases imposed and collected on shipments to all of the destinations subject to the prescriptions in Docket No. 41685. Otherwise, DNI will have no choice but to pursue its available legal remedies before the STB and/or other appropriate forums.

Your reconsideration and acceptance of our proposed resolution is requested.

Sincerely,

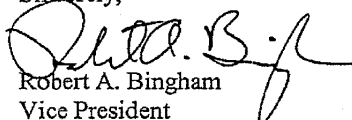

Robert A. Bingham
Vice President
Legal and Commercial Services

EXHIBIT B



KANEB PIPE LINE
OPERATING
PARTNERSHIP, L.P.

JIMMY L. HARRISON
President

VIA FACSIMILE – (801) 328-6532
AND REGULAR U.S. MAIL DELIVERY

April 24, 2003

Robert A. Bingham
Vice President, Legal and Commercial Services
Dyno Nobel, Inc.
11th Floor - Crossroads Tower
Salt Lake City, Utah 84144

Re: **Tariff Rates**

Dear Mr. Bingham:

Kaneb Pipe Line Company ("Kaneb") wishes to respond to your April 1, 2003, correspondence concerning the general 7% tariff increase for all rates on Kaneb's anhydrous ammonia pipeline and the cessation of the "industrial" carrier classification, effective April 1, 2003. As an initial matter, we find ourselves unable to agree with your conclusion that Kaneb is somehow barred from enacting a reasonable and non-discriminatory rate increase by virtue of Koch Pipeline Company's prior, sidebar agreement with Dyno Nobel, Inc. ("DNI"), or the Surface Transportation Board's decision concerning Koch Pipeline's 1996 rate increase. Kaneb has not assumed Koch Pipeline's obligations under its October 25, 2000, letter agreement with DNI (which agreement contains no inurement language and appears to have expired), nor is Kaneb the "affected carrier" under the May 3, 2000, STB decision involving Koch Pipeline Company.

In its decision concerning Koch Pipeline, the Surface Transportation Board acknowledged the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide the transportation in question, cover its costs, and provide a reasonable rate of return on investment. Without the April 1, 2003, general tariff increase, Kaneb would be unable to recover its investment in the pipeline within a reasonable period of time and would suffer a return-on-investment that is less than the level of return available on alternative investments. As such, the subject rate increase is appropriate, necessary and wholly warranted to ensure adequate revenues to cover Kaneb's costs, provide an acceptable rate of return on Kaneb's investment in the pipeline, and enable Kaneb to compete equally with other firms for available financing to maintain and/or replace its ammonia pipeline facilities, as required.

Kaneb is also unable to agree with the notion that tariff rates should not be computed on a "miles moved" basis. The "industrial" classification utilized by Koch Pipeline seems to have been put into place in an era when there was surplus capacity on the overall system in an attempt to fill excess capacity. The pipeline has not been in this under utilized capacity situation for some time and, in actuality, the so-called "industrial" carrier is effectively being subsidized by long haul shippers moving product shorter distances at higher transportation rates. The new tariff filing was

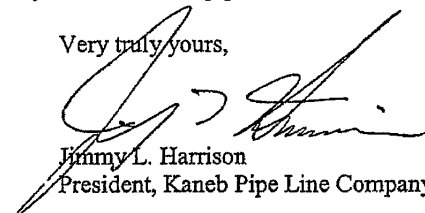
7340 West 21st St. N., Suite 200
Wichita, Kansas 67205
phone 316.773.9000
fax 316.773.9001
www.kanecbpipeline.com

Dyno Nobel, Inc.
Attn: Robert A. Bingham
April 22, 2003
Page 2

designed to correct this inequity and place all shippers on a level playing field with no preferential treatment shown to any one shipper.

Kaneb appreciates DNI's competitive concerns and remains open to discussion with DNI regarding possible alternatives intended to minimize the initial effect of the April 1, 2003, tariff increase for all rates on Kaneb's anhydrous ammonia pipeline.

Very truly yours,



Jimmy L. Harrison
President, Kaneb Pipe Line Company

JLH/