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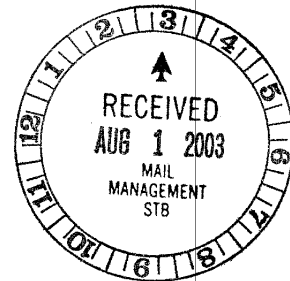
Kathrine L. Henry
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August 1, 2003

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings
AUG 01 2003
Part of
Public Record



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 the Motion of Kaneb Pipe Line Partners, L.P. to Dismiss Count I of Complaint. A diskette containing the text of the Motion to Dismiss 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

Enclosures

208592

BEFORE THE
SURFACE TRANSPORTATION BOARD

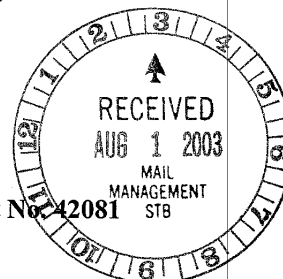
DYNO NOBEL INC.,

Complainant,

v.

KANEB PIPE LINE PARTNERS, L.P.

Defendant



ENTERED
Office of Proceedings

AUG 01 2003

Part of
Public Record

MOTION OF KANEB PIPE LINE PARTNERS, L.P.
TO DISMISS COUNT I OF COMPLAINT

Pursuant to 49 U.S.C. § 14701(b) and 49 C.F.R. § 1111.5 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" or "Defendant")¹, by and through their counsel, submit this Motion to Dismiss Count I of the Complaint ("Motion to Dismiss") submitted in this proceeding.²

On June 16, 2003, Dyno Nobel Inc. ("Dyno Nobel" or "Complainant") filed with the Board a complaint against Kaneb, challenging certain rate increases with respect to Dyno Nobel's shipments of anhydrous ammonia ("AH") through Kaneb's pipeline. Specifically, Complainant alleges that the rate increases imposed by Kaneb on or about April 1, 2003, violate the prohibition in 49 U.S.C. § 15501 against unreasonable pipeline rates and practices as the increases (a) contravene a purported agreement by Kaneb to maintain rate parity between Dyno Nobel and the El Dorado Chemical Company ("EDC"), whose rates Dyno Nobel alleges are covered by Board-imposed prescriptions,

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

² This Motion to Dismiss does not discuss or consider the merits of Counts II and III of the Complaint.

in violation of the Board's Change of Policy, Railroad Contract Rates³ ("CRP") ("Count I"); (b) constitute unreasonable discrimination against Dyno Nobel in violation of 49 U.S.C. § 15505 ("Count II"); and (c) exceed a maximum reasonable level under the Board's Constrained Market Pricing policies ("Count III").

Kaneb states that the Board should dismiss Count I of the Complaint for the following reasons:

- 1) Neither the Board's CRP nor the Letter Agreement between Koch and Dyno Nobel prohibits an otherwise reasonable rate increase or change in rate design by Kaneb;
- 2) The Board's CRP does not apply to this proceeding, since Kaneb was not a party to the October 25, 2000 letter agreement ("Letter Agreement")⁴ between Dyno Nobel and Koch Pipeline Company, L.P. ("Koch"); and
- 3) The Board's CRP does not apply to this proceeding, since Kaneb did not assume the Letter Agreement when it purchased Koch's AH pipeline.

I. STATEMENT OF FACTS

On September 17, 2002, Koch and Kaneb entered into an Asset Purchase and Sale Agreement ("Purchase Agreement"), whereby Kaneb agreed to purchase Koch's AH pipeline effective November 1, 2002. Kaneb agreed to assume certain of Koch's obligations associated with the AH pipeline which were related exclusively to or reasonably necessary for use of the purchased assets, including those contracts expressly described in Section 2.04 of the Purchase Agreement.

On October 30, 2002, and effective November 1, Kaneb issued its tariff adoption notice applicable to the AH pipeline.

³ Change of Policy, Railroad Contract Rates, Ex Parte No. 358-F (served Feb. 21, 1980).

⁴ Dyno Nobel references the October 25, 2000 letter agreement in the Complaint as a "parity-maintenance agreement" or "rate parity agreement." See Complaint ¶¶ 12, 18.

Kaneb published new tariff sheets on March 10, 2003, to be effective April 1. In the accompanying transmittal letter, Kaneb explained that the new tariff reflected a general increase of 7% to interstate tariff movements on the AH pipeline system. In addition, the tariff eliminated all references and incentive rates previously given to “industrial” shippers, including Dyno Nobel, and put such shippers on an equal basis with the non-industrial shippers. Kaneb also revised the capacity allocation policy in order to allocate capacity on a more equitable basis for all shippers.

In an April 1, 2003 letter,⁵ Dyno Nobel claimed that Kaneb, as the new owner of the AH pipeline, was prohibited from increasing its rates at Louisiana, Missouri (“LOMO”). This claim was based on an October 25, 2000 Letter Agreement between Dyno Nobel and Koch and the Board’s May 9, 2000 decision in STB Docket No. 41685, which rolled back rates for the AH pipeline at El Dorado, Arkansas. In response, Kaneb advised Dyno Nobel on April 24, 2003,⁶ that it did not assume Koch’s obligations arising under the Letter Agreement. In addition, Kaneb further stated that the “industrial” classification resulted in a subsidy for industrial customers by non-industrial customers and that the new tariff was designed to correct this inequity. Finally, Kaneb explained that 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 that available on alternative investments.

On June 16, 2003, Dyno Nobel filed its Complaint with the Board, alleging, inter alia, in Count I that Kaneb failed to preserve the rates at LOMO as established under Koch and Dyno Nobel’s Letter Agreement in violation of the Board’s CRP.

⁵ Exhibit A hereto. This letter was referenced in ¶ 15 of the Complaint, but was not attached as an exhibit.

⁶ Exhibit B hereto. This letter was also referenced in ¶ 15 of the Complaint, but was not attached as an exhibit.

II. BOARD STANDARDS FOR MOTIONS TO DISMISS

According to the provisions of 49 U.S.C. § 14701(b), the Board may dismiss a complaint that it determines “does not state reasonable grounds for investigation and action.” The Board has implemented this provision, stating that a complaint will be dismissed where the Board finds that there is no basis on which the relief sought can be granted.⁷ Furthermore, the Interstate Commerce Commission (“ICC”), the Board’s predecessor agency, established a precedent that the Board has adopted that “a complaint may be dismissed without holding an evidentiary hearing where the issues involved are essentially legal.”⁸ When there are no issues of material fact to be resolved, the Board has granted motions to dismiss.⁹

As demonstrated below, Count I of Dyno Nobel’s Complaint fails to meet the Board’s standard for providing a basis for the relief requested. Count I does not state reasonable grounds for investigation and action, there are no material issues of fact to be resolved, and the contract issues involved in Count I are essentially legal. Therefore, Kaneb urges the Board to dismiss Count I of the Complaint.

⁷ Grain Land Coop. v. Canadian Pac. Ltd., STB Docket No. 41687, 1999 STB LEXIS 694, at *4 (Dec. 8, 1999). Accord Nancy Hall v. Aloha Int’l Moving Serv., Inc., STB Docket No. 42048, 2001 STB LEXIS 252, at *8 (Mar. 14, 2001).

⁸ ZoneSkip, Inc. v. UPS, Inc., 8 I.C.C. 2d 645, 1992 ICC LEXIS 151, at *10 (July 10, 1992) aff’d mem., 998 F.2d 1007 (3d Cir. 1993); DHX, Inc. v. Matson Navigation Co., STB Docket No. WCC-105, 2003 STB LEXIS 269, at *9-10 (May 14, 2003).

⁹ Gov’t of the Territory of Guam v. Sea-Land Serv., STB Docket No. WCC-101, 2001 STB LEXIS 863, at *6 (Nov. 15, 2001); Trailer Bridge, Inc. v. Sea Star Lines, STB Docket No. WCC-104, 1999 STB LEXIS 703, at *3 (Dec. 10, 1999); Ocean Logistics Mgmt., Inc. v. NPR, Inc., STB Docket No. WCC-102, 1999 STB LEXIS 453, at *4 (July 27, 1999); Caribbean Shippers, Inc. v. NPR, Inc., STB Docket No. WCC-100, 1997 STB LEXIS 58, at *8 (Mar. 25, 1997).

III. ARGUMENT

A. Neither the Board's CRP nor the Sidebar Letter Agreement Between Koch and Dyno Nobel Bar Kaneb from Enacting Reasonable and Nondiscriminatory Changes to Rate Levels or Rate Design.

Count I of Dyno Nobel's Complaint is entitled "Violation of Contract Rate Policy."¹⁰ Dyno Nobel's allegations under Count I are based on a convoluted legal theory that cannot withstand scrutiny. First, Dyno Nobel alleges that the Board's February 1980 Ex Parte No. 358-F, Change of Policy, Railroad Contract Rates, applies to this case.¹¹ In that decision, the Board stated that it would view the existence of a rate agreement as creating a presumption that the agreed rates constituted the maximum reasonable rates. This allegation is premised on the faulty argument that, even though CRP became inapplicable in the rail context after the Staggers Act¹² was passed in October 1980, it still somehow applies in the context of the pipeline industry. Dyno Nobel supports this leap of logic by arguing that because the Board determined in Docket No. 41685 that it was appropriate to apply its maximum rate standards applicable to the railroad industry, to the pipeline industry as well, CRP applies to pipeline rate agreements since CRP was "part of the fabric of those railroad maximum rate standards."¹³

There is simply no basis for this argument. CRP was not "part of the fabric" of the railroad maximum rate standards as applied to contracts entered into after October 1980, much less twenty years later when the Board issued its decision in Docket No. 41685 and the Letter Agreement between Dyno Nobel and Koch was signed. Indeed, the ICC clearly stated that it would apply CRP only to contracts entered into between

¹⁰ Complaint at 6.

¹¹ Complaint at Exhibit E.

¹² Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895 (Oct. 14, 1980).

¹³ Complaint ¶ 17.

November 1978, when CRP was first issued, and October 1980.¹⁴ In addition, the Board's decision in Docket No. 41685 makes no mention of CRP, nor has the Board applied CRP to the pipeline industry in any other decision. Thus, Dyno Nobel cannot validly assert that Kaneb has violated CRP.¹⁵

In addition, even assuming, arguendo, that CRP were applicable to this case, the policy only established a rebuttable presumption to be applied by the Board in its decisions, not an absolute rule that barred a common carrier from ever increasing its rates above agreed levels. Thus, it is difficult, if not impossible, to understand how Kaneb could violate a rebuttable presumption that was, for a short time, used by the ICC to decide rail rate cases, nor does the Complaint explain exactly how Kaneb violated the presumption.

Instead, after making the conclusory allegation that CRP applies to pipeline rate agreements, Dyno Nobel then abandons this line of argument and jumps to the claim that Kaneb's rate increase violated the Letter Agreement between Koch and Dyno Nobel. Again, Dyno Nobel's allegation is based on a legal theory that collapses upon close analysis.

First, Dyno Nobel alleges that KPP's rate to El Dorado remains frozen by the Board's maximum rate prescription in Docket No. 41685.¹⁶ Dyno Nobel cites 49 U.S.C. § 15503(a) and Arizona Grocery for the proposition that the rates prescribed in Docket No. 41685 remain the legal rates applicable to the movements "at issue in that proceeding" until changed by further Board order. Dyno Nobel then asserts that Kaneb

¹⁴ Coal Rate Guidelines - Nationwide, Ex Parte No. 347 (Sub-No. 1), 364 I.C.C. 360 (Nov. 10, 1980).

¹⁵ In addition, it is doubtful that the ICC would have regarded the sidebar Letter Agreement as the type of rate agreement that was entitled to the CRP presumption.

¹⁶ Complaint ¶ 18.

assumed Koch's legal obligations, including its obligation to comply with the Board's rate prescriptions. Accordingly, Dyno Nobel asserts, Kaneb's April 1, 2003 tariff was a legal nullity insofar as it purported to increase the El Dorado rate.¹⁷ Dyno Nobel's conclusion is that because Kaneb could not legally increase the rate for shipments to El Dorado, it was barred by the Letter Agreement from increasing rates for shipments to LOMO.

Dyno Nobel's argument is built on a series of impermissibly broad interpretations of the authorities cited. 49 U.S.C. § 15503(a) provides that when the Board prescribes a rate, classification or rule after a hearing, the affected carrier may not publish, charge or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board. The statutory provision means that the affected carrier may no longer charge the rate that the Board has determined is unreasonable, but must conform to the prescribed rate. It does not provide, as Dyno Nobel implies, that the affected carrier (or its successor) cannot at a later time change the prescribed rate unless authorized by further Board order, even if circumstances have changed and the changed rate is reasonable and nondiscriminatory.

Dyno Nobel's claim is equally unsupported by Arizona Grocery.¹⁸ In that case, the U.S. Supreme Court held that where the ICC has, upon complaint and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not, at a later time, and upon the same or additional evidence, "by declaring its own finding as to reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured by what the [ICC] now holds it should have decided in the earlier

¹⁷ Id., n. 3

¹⁸ Arizona Grocery Co. v. Atchison, T. & S.F. Ry., 284 U.S. 370 (1932).

proceeding to be a reasonable rate.”¹⁹ Dyno Nobel cites to page 387 of the decision, which contains language stating that a carrier cannot change a prescribed rate and must conform to the order of the ICC. When taken in context, the court held, even if the ICC later determines that its prescribed rate was erroneous, the carrier had no choice but to implement the prescribed rate at the time it was prescribed; therefore, the ICC could not later require the carrier to pay reparations based on the difference between the previous erroneous prescribed rate and the new, lower, correct prescribed rate. The decision does not stand for the proposition created by Dyno Nobel, that is, once the Board has prescribed a rate, the carrier (or its successor) cannot change that rate at a later time without further order, even if circumstances have changed and the new rate is reasonable and nondiscriminatory.²⁰

Arizona Grocery simply stands for the principle that once the ICC prescribes a rate, the carrier is not free to decide on its own that the prescribed rate is erroneous and enact a different rate. In this case, Kaneb has not presumed to change its rates and rate design because it believes that the Board’s decision in Docket No. 41685 was erroneous. Instead, as explained in the cover letter to the Board dated March 10, 2003,²¹ accompanying the tariff, Kaneb has appropriately changed the pipeline rate design, inter alia, to eliminate “incentive” rates given to “industrial” shippers, in order to put them on an equal basis with non-industrial shippers. In addition, Kaneb enacted a general rate increase of 7% to interstate tariff movements on the system. As a new owner of the

¹⁹ Id. at 390.

²⁰ Similarly, the Hanson decision at sheet 16, cited by Dyno Nobel, merely states that a buyer of an active rail line acquires a common carrier obligation with respect to the line. Kaneb does not dispute this principle. However, Dyno Nobel implies that the decision states more than it, in fact, does.

²¹ Complaint at Exhibit D. Kaneb notes that the Board returned the tariff to Kaneb as unnecessarily filed. Kaneb further notes that the only shipper eligible for the “incentive” industrial plant rate was Dyno Nobel.

pipeline, and as explained to Dyno Nobel in its April 24, 2003 letter, Kaneb was entitled to make these changes in order to make the system more equitable for all shippers and 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 facilities, as required.

In addition, Dyno Nobel cannot reasonably claim that the Letter Agreement between it and Koch has any current effect. On its face, the Letter Agreement was clearly a sidebar agreement that was intended to apply only during the appeal of the Board's May 9, 2000 decision in Docket No. 41685, to which Dyno Nobel was not a party. Pursuant to the Letter Agreement, Koch agreed that it would reduce its rates for delivery to LOMO pursuant to Dyno Nobel's request to bring these rates into parity with the rates reduced in the May 9, 2000 decision. The Letter Agreement provided that if Koch were successful in its appeal, Dyno Nobel would repay, with interest, the difference between the reduced rates and the higher rates in effect immediately prior to such reduction.

The Letter Agreement further provided that if, and only if, Koch were unsuccessful in its appeal of the May 9 decision and the El Dorado rates were rolled back, the two-year limitation in 49 U.S.C. § 15905(c) for filing a rate reasonableness and/or discrimination complaint with the Board for rates at LOMO would be tolled from the effective date of the Letter Agreement (i.e., October 25, 2000) to sixty days after the issuance of a final decision on appeal of the May 9, 2000 decision.²² Consequently, if Koch lost its case on appeal, Koch and Dyno Nobel recognized that Dyno Nobel would need to file a complaint against Koch within sixty days following the appellate decision

²² Letter Agreement ¶ 4.

to continue to receive any rate reduction, since it was not a party to Docket No. 41685, nor were its rates at issue in that proceeding.

These terms were consistent with Note 195, attached hereto as Exhibit C, which was added to Koch's tariff to reflect its agreement with Dyno Nobel and to explain the change to the rate sheets to reduce Dyno Nobel's rates. Note 195, which was eliminated in Kaneb's November 1, 2002 adoption of Koch's tariff following its purchase of the pipeline, specifically provided that Dyno Nobel's rates were not covered by the Board's May 9, 2000 decision in Docket No. 41685. Note 195 further stated:

Pending the outcome of the appeal and any subsequent proceedings, Carrier is reducing the rate applicable to this movement, even though it is not required to do so, subject to the following condition: If Carrier is successful in its appeal of the May 3, 2000, STB decision and the rate roll-back is reversed or invalidated, the rate applicable to this movement will be increased to the rate in existence prior to this reduction and the increased rate will be applied retroactively to movements occurring between the effective date of this reduction and the effective date Carrier increased the rate. In such event, each shipper whose shipments were made at the lower rate will be invoiced for the difference between this reduced rate and the increased rate, plus interest pursuant to the methodology set out in 49 CFR Part 1141.²³

The Letter Agreement did not state that Dyno Nobel's rates would be reduced indefinitely. The Letter Agreement was executed for the sole purpose of reducing those rates for a finite period of time – through the outcome of the appeal and any subsequent appellate proceedings regarding the Board's May 9 decision – after which, depending on the outcome of the appeal, Dyno Nobel would either have to pay Koch for the money it “borrowed” during the appeal through the reduced rates and pay the higher rates in the future, or, if Koch lost the appeal, file its own complaint with the Board in order to

²³ Exhibit C at 10 (emphasis added).

continue to receive reduced rates. Although Koch did not prevail on its appeal, Dyno Nobel never filed a complaint with the Board, as provided in the Letter Agreement. Yet, more than two years after the appeals court decision on July 27, 2001, Dyno Nobel is still trying to preserve the rate reductions under the Letter Agreement. Clearly, the Letter Agreement expired long ago. Dyno Nobel cannot legitimately attempt to resuscitate the Letter Agreement in the name of “rate parity” in order to, in fact, retain a competitive advantage over and continue to be subsidized by other shippers under Kaneb’s new rate design.

B. The Board’s CRP Does Not Apply to this Proceeding, since Kaneb Was Not a Party to, nor did Kaneb assume the Letter Agreement between Dyno Nobel and Koch.

Even assuming, arguendo, that the CRP applies to the Letter Agreement as between Koch and Dyno Nobel, it cannot apply to this proceeding, since Kaneb was not a party to the Letter Agreement, nor does Dyno Nobel allege that Kaneb was a party to the agreement. In addition, Kaneb did not assume the Letter Agreement when it purchased the AH pipeline from Koch.

1. Kaneb was not a Party to the Letter Agreement.

As reflected by the plain language of the Letter Agreement, only Dyno Nobel and Koch are identified as parties to the Letter Agreement:

This letter is to confirm the agreement between Koch Pipeline Company, Ammonia Division (“KPL”) and DYNO NOBEL INC. (“Dyno Nobel”) regarding the reduction of rates for delivery of anhydrous ammonia under KPL’s rate sheet to Louisiana, Missouri.²⁴

...

At Dyno Nobel’s request, KPL has agreed to reduce its rates

²⁴ Letter Agreement ¶ 1 (emphasis added).

of delivery for anhydrous ammonia through its pipeline system to Louisiana, Missouri, to the rates for such deliveries in effect immediately prior to the 1996 increase.²⁵

...

In consideration for KPL agreeing to make this reduction and its issuance of a corresponding rate sheet, Dyno Nobel has agreed that it will repay KPL, with the applicable interest calculated pursuant to the methodology set out in 49 CFR Part 1141, for the difference between the reduced rates as shown in the attached rate sheet and the higher rates in effect immediately prior to such reduction, if KPL is successful in its appeal of the May 3, 2000 STB decision and the rate roll-back ordered therein is reversed or invalidated, and the reversal or invalidation directly or indirectly results in higher rates for other shippers for the period of this reduction from the rates currently permitted under the May 3, 2000 decision.²⁶

In consideration of the mutual promises of the parties herein made, KPL agrees that if, and only if, KPL is unsuccessful in its appeal of the May 3 STB decision and the rate roll-back ordered therein is affirmed, the two (2) year limitation for the filing of a complaint . . . shall be tolled from the effective date of this letter agreement to sixty (60) days after the issuance of a final decision on the appeal of the May 3, 2000 STB decision.²⁷

. . . .

Kaneb is not referenced anywhere in the Letter Agreement, nor is there any provision in the Letter Agreement discussing its applicability to successor pipeline owners. Moreover, the Letter Agreement reflects consideration and mutual agreements only between Koch and Dyno Nobel. Indeed, in Dyno Nobel's own Complaint, Dyno Nobel alleges that Kaneb's proposed rate increase would violate "Koch's agreement not to increase DNI's [LOMO] rate so long as it was precluded from increasing the

²⁵ Letter Agreement ¶ 2 (emphasis added).

²⁶ Letter Agreement ¶ 3 (emphasis added).

²⁷ Letter Agreement ¶ 4 (emphasis added).

prescribed rates.”²⁸ In other portions of the Complaint, Dyno Nobel refers to the Letter Agreement as Kaneb’s agreement;²⁹ however, Dyno Nobel provides no justification for attributing the agreement to Kaneb.

Basic contract law establishes that under privity of contract, a person cannot acquire rights or be subject to liabilities arising under a contract to which he is not a party.³⁰ The Letter Agreement is a contract signed by Dyno Nobel and Koch, intended to benefit only the parties that contracted to that agreement – in this case, Dyno Nobel and Koch. Kaneb did not participate in the negotiations leading to the Letter Agreement, nor did Kaneb receive any consideration for the agreements made by Koch and Dyno Nobel. Thus, Kaneb was not a party to the Letter Agreement between Dyno Nobel and Koch, and is therefore not responsible for performing Koch’s obligations arising under such agreement.

2. Kaneb Did Not Assume the Letter Agreement when it Purchased the AH Pipeline from Koch.

Dyno Nobel alleges that when Kaneb purchased the AH pipeline from Koch, Kaneb agreed to assume and be bound by Koch’s contracts “relating to the pipeline,” referencing Section 2.04 of the Kaneb/Koch Purchase Agreement.³¹ However, Dyno Nobel does not expressly allege that Kaneb agreed to assume and be bound by the Letter Agreement between Koch and Dyno Nobel. Therefore, Count I of the Complaint should be dismissed for failure to state a claim against Kaneb, since the Board’s CRP can

²⁸ Complaint ¶ 15 (emphasis added).

²⁹ See, e.g., Complaint ¶¶ 2, 3, 19.

³⁰ Black’s Law Dictionary 1217 (7th ed. 1999), citing G. H. Treitel, The Law of Contract 538 (8th ed. 1991); Grumman Ohio Corp. v. Dole, 776 F.2d 338, 344 (D.C. Cir. 1985).

³¹ Complaint ¶ 13.

arguably apply to this proceeding only if Kaneb was either a party to the Letter Agreement or agreed to assume the Letter Agreement.

However, to the extent Dyno Nobel's allegation implies that the Letter Agreement was included among the contracts Kaneb agreed to assume from Koch, the plain language of the Purchase Agreement belies that implication. Section 2.04 of the Purchase Agreement, which is contained in Article II: Sale of Assets, states:

Assumption: As of the Effective Time, Buyer shall assume all rights and obligations arising after the Effective Time under the Leasehold Interests, Property Rights, Permits and Contracts and agrees to Indemnify the Seller Indemnitees from and against all Liabilities/Claims under the Leasehold Interests, Property Rights, Permits and Contracts accruing after the Effective Time; but only in each case if such obligations and Liabilities/Claims do not arise out of or relate to acts or omissions that occurred prior to the Effective Time.³²

Section 2.04 must be read in conjunction with Section 2.02(f). The term "Contracts" in Section 2.04 of the Purchase Agreement is defined as follows in Section 2.02(f) of the Purchase Agreement:

Contracts. Subject to the provisions of Section 14.11, all of [Koch's] right, title and interest in and to any and all contracts, warranties and other agreements relating exclusively to or which are reasonably necessary for the use of the Assets ("Contracts"), including the Contracts listed in Exhibit F.³³

The contracts specifically listed in Exhibit F, attached hereto as Exhibit D, include agreements for electric service related to pump stations, power purchase agreements, employee benefit plans and cell phone and paging services – contracts expressly related to Kaneb's management of the AH pipeline. Notably, the Letter Agreement is not listed

³² Purchase Agreement § 2.04.

³³ Purchase Agreement § 2.02(f) (emphasis added). Assets in the Purchase Agreement include "Pipelines, Pipeline Assets and Other Fixtures"; "Real Property"; "Leasehold Interests"; "Property Rights"; "Permits"; "Contracts"; "Intellectual Property"; "Inventory" and "Records." See Purchase Agreement § 2.02(a) – (i).

in Exhibit F, nor are any other similar agreements between Koch and its shippers. In fact, there is no conceivable reason why Kaneb would have agreed to purchase or assume a contract such as the Letter Agreement, since it does not relate “exclusively to” nor is it “reasonably necessary for the use of the Assets” Kaneb purchased from Koch.³⁴

Dyno Nobel was not named as a party who would benefit under the Purchase Agreement, nor was Dyno Nobel’s Letter Agreement with Koch specifically included in the Purchase Agreement as a contract that Kaneb would assume once it bought the AH pipeline. If Koch or Kaneb had intended that Dyno Nobel retained any rights pursuant to the Letter Agreement, they would have included the agreement in Exhibit F of the Purchase Agreement, which lists various contracts to be assumed by Kaneb. Yet, no mention is made in the Purchase Agreement with regard to Dyno Nobel or the Letter Agreement.

The ICC has established that as a general rule of contract law, contracts create rights for third parties only where there is intent to create such rights.³⁵ Since there is no indication that Kaneb and Koch intended that the Letter Agreement would become part and parcel of the Purchase Agreement, Dyno Nobel, as a third party, cannot claim rights under Section 2.04 of the Purchase Agreement to force Kaneb to maintain rates at LOMO at the level agreed to by Koch and Dyno Nobel.

Furthermore, Section 2.04 establishes that Kaneb agrees to assume all rights and obligations of various assets, including contracts, arising after the “Effective Time” of the

³⁴ The phrase, “use of the Assets,” in Section 2.02(f) clearly relates to Kaneb’s use of the AH pipeline and the various assets that are needed to manage, run and administer the pipeline, as listed in Section 2.02(a) – (i).

³⁵ Kokoku Wire Industries Corp., Petition for Declaratory Order – Certain Rates and Practices of R-W Service Systems, Inc., No. 40968, 1994 MCC LEXIS 126, at *22 (citing 17A Am.Jur.2d Contracts § 435 (1991)); see also Grumman Ohio Corp. 776 F.2d at 344-345.

Purchase Agreement, but only if such obligations do not “arise out of or relate to acts or omissions that occurred prior to the Effective Time” of the Purchase Agreement.³⁶ The Effective Date of the Purchase Agreement was November 1, 2002. The Letter Agreement was dated October 25, 2000, and, as discussed above, applied only to the period of time during which the appeal of the Board’s May 9, 2000 decision in Docket No. 41685 was pending, which ended on July 27, 2001, when the Court of Appeals affirmed the Board’s May 9, 2000 decision. Since the obligations associated with the Letter Agreement were met prior to the Effective Date of the Purchase Agreement and have expired, Dyno Nobel cannot claim that Kaneb assumed the obligations associated with the Letter Agreement when it purchased the AH pipeline.

IV. CONCLUSION

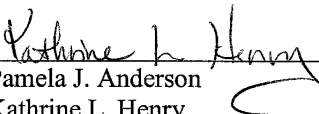
WHEREFORE, in consideration of the above and foregoing, Kaneb respectfully requests that the Board:

1. Grant this Motion to Dismiss Count I of the Complaint, with prejudice, finding that the Complaint failed to state a claim upon which relief can be granted;
2. Award Kaneb its costs and fees incurred in defense of this action; and

³⁶ Purchase Agreement § 2.04.

3. Grant Kaneb such additional relief as it deems proper.

Respectfully submitted,


Pamela J. Anderson
Kathrine L. Henry
Angela Addison Freeman
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
7th Floor
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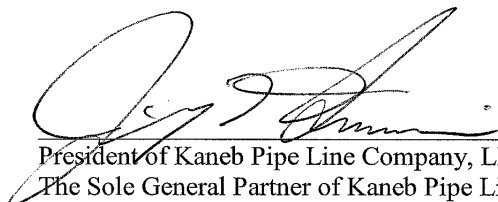
Attorneys for Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dated: August 1, 2003

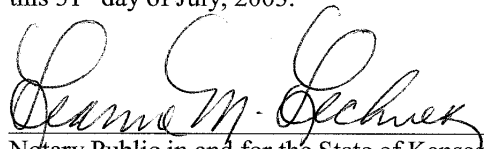
VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF)

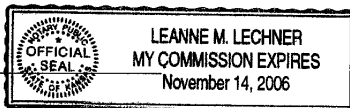
Jimmy Harrison, being duly sworn, deposes and says that he has read the foregoing Motion to Dismiss the Complaint, knows the contents thereof, and that the facts stated therein are true and correct to the best of his knowledge, information and belief.


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

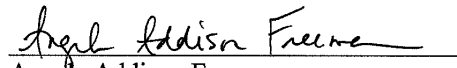
My Commission expires on _____



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

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

Robert A. Bingham
Vice President
Legal and
Commercial Services

www.dynonobel.com

Dear Mr. Harrison:

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.

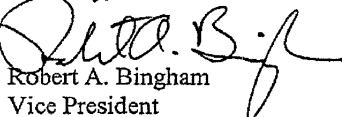
DNI's LOMO facility and EDC's El Dorado, Arkansas, facility are direct competitors in the Midwest markets for ammonium nitrate. Although EDC already enjoys more favorable rates than DNI does, DNI has been able largely to offset that cost advantage through management and production efficiencies, and thereby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



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

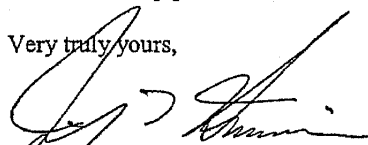
7340 West 21st St. N., Suite 200
Wichita, Kansas 67205
phone 316.773.9000
fax 316.773.9001
www.kanebpipeline.com

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,

A handwritten signature in dark ink, appearing to read "Jimmy L. Harrison", is written over the typed name and title.

Jimmy L. Harrison
President, Kaneb Pipe Line Company

JLH/

EXHIBIT C

RATES

KOCH PIPELINE COMPANY, L.P.

RATES RELATING TO

ANHYDROUS AMMONIA

SHIPMENTS

The rates herein are the rates in dollars per ton, for the interstate transportation of anhydrous ammonia by pipeline, subject, except as otherwise provided herein, to the Regulations published by KOCH PIPELINE COMPANY, L.P. effective October 1, 2000, and supplements thereto and reissues thereof.

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

ISSUED: September 29, 2000

EFFECTIVE: October 1, 2000

Issued By
Anthony L. Botterweck
KOCH PIPELINE COMPANY, L.P.
P.O. Box 2256
Wichita, Kansas 67201

Compiled by
Donna A. Williams
KOCH PIPELINE COMPANY, L.P.
P.O. Box 2256
Wichita, Kansas 67201
(316) 828-3497

[W] ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE	
<u>Fortier, Louisiana</u>	<u>Arkansas:</u>		
	El Dorado	\$ 6.63	
	<u>Missouri:</u>		
	Hermann	\$ 16.37	
	Louisiana	[D] 16.37	(1) (2) (3)
	Palmyra	20.00	
	<u>Illinois:</u>		
	Wood River	\$ 18.54	
	Cowden	21.31	
	Trilla	21.76	
	<u>Iowa:</u>		
	Fort Madison	\$ 22.80	
	Washington	23.44	
	Marshalltown	23.82	
	Iowa Falls	24.00	
	Garner	26.75	
	Algona	24.44	
	Spencer	24.75	
	Holstein	25.00	
	<u>Indiana:</u>		
	Terre Haute	\$ 22.25	
	Crawfordsville	22.94	
	Frankfort	23.37	
	Walton	23.75	
	Huntington	24.38	
	<u>Nebraska:</u>		
	Blair	\$ 27.75	
	Fremont	25.44	
	David City	25.56	
	Aurora	25.95	

[W] ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE		
<u>Luling, Louisiana</u>	<u>Arkansas:</u>			
	El Dorado	\$	6.63	
	<u>Missouri:</u>			
	Hermann	\$	16.19	
	Louisiana	[D]	16.19	(1) (2) (3)
	Palmyra		20.00	
	<u>Illinois:</u>			
	Wood River	\$	18.33	
	Cowden		21.06	
	Trilla		21.50	
	<u>Iowa:</u>			
	Fort Madison	\$	22.75	
	Washington		23.31	
	Marshalltown		23.62	
	Iowa Falls		23.82	
	Garner		26.50	
	Algona		24.32	
	Spencer		24.49	
	Holstein		24.75	
	<u>Indiana:</u>			
	Terre Haute	\$	22.06	
	Crawfordsville		22.76	
	Frankfort		23.13	
	Walton		23.49	
	Huntington		24.25	
	<u>Nebraska:</u>			
	Blair	\$	27.75	
	Fremont		25.31	
	David City		25.44	
	Aurora		25.69	

[W] ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE		
<u>Donaldsonville, Louisiana</u>	<u>Arkansas:</u>			
	El Dorado	\$	6.63	
	<u>Missouri:</u>			
	Hermann	\$	16.06	
	Louisiana	[D]	16.06	(1) (2) (3)
	Palmyra		20.00	
	<u>Illinois:</u>			
	Wood River	\$	18.19	
	Cowden		20.95	
	Trilla		21.31	
	<u>Iowa:</u>			
	Fort Madison	\$	22.50	
	Washington		23.00	
	Marshalltown		23.44	
	Iowa Falls		23.62	
	Garner		26.50	
	Algona		24.13	
	Spencer		24.38	
	Holstein		24.49	
	<u>Indiana:</u>			
	Terre Haute	\$	21.94	
	Crawfordsville		22.57	
	Frankfort		22.94	
	Walton		23.37	
	Huntington		24.00	
	<u>Nebraska:</u>			
	Blair	\$	27.25	
	Fremont		25.19	
	David City		25.31	
	Aurora		25.51	

[W] ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE	
<u>Pollock, Louisiana</u>	<u>Arkansas:</u>		
	El Dorado	\$ 6.63	
	<u>Missouri:</u>		
	Hermann	\$ 15.82	
	Louisiana	[D] 15.82	(1) (2) (3)
	Palmyra	19.00	
	<u>Illinois:</u>		
	Wood River	\$ 17.91	
	Cowden	20.56	
	Trilla	21.01	
	<u>Iowa:</u>		
	Fort Madison	\$ 25.00	
	Washington	22.76	
	Marshalltown	23.13	
	Iowa Falls	23.37	
	Garner	26.00	
	Algona	23.75	
	Spencer	24.00	
	Holstein	24.32	
	<u>Indiana:</u>		
	Terre Haute	\$ 21.62	
	Crawfordsville	22.25	
	Frankfort	22.62	
	Walton	23.00	
	Huntington	23.62	
	<u>Nebraska:</u>		
	Blair	\$ 27.00	
	Fremont	24.75	
	David City	25.00	
	Aurora	25.31	

[W] ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE		
<u>Sterlington, Louisiana</u>	<u>Arkansas:</u>			
	El Dorado	\$	6.63	
	<u>Missouri:</u>			
	Hermann	\$	15.56	
	Louisiana	[D]	15.56	(1) (2) (3)
	Palmyra		19.00	
	<u>Illinois:</u>			
	Wood River	\$	17.62	
	Cowden		20.37	
	Trilla		20.87	
	<u>Iowa:</u>			
	Fort Madison	\$	22.00	
	Washington		22.57	
	Marshalltown		22.94	
	Iowa Falls		23.13	
	Garner		25.75	
	Algona		23.49	
	Spencer		23.82	
	Holstein		24.00	
	<u>Indiana:</u>			
	Terre Haute	\$	21.20	
	Crawfordsville		22.01	
	Frankfort		22.50	
	Walton		22.87	
	Huntington		23.44	
	<u>Nebraska:</u>			
	Blair	\$	26.75	
	Fremont		24.49	
	David City		24.75	
	Aurora		25.19	

[W] **ALL RATES HAVE BEEN DECREASED UNLESS OTHERWISE INDICATED AND
ARE SUBJECT TO NOTE 195**

RATE IN DOLLARS PER TON

FROM	TO	RATE	
<u>Taft, Louisiana</u> ⁽³⁾	<u>Arkansas:</u>		
	El Dorado	\$ 6.63	
	<u>Missouri:</u>		
	Hermann	\$ 16.16	
	Louisiana	16.16	(1) (2)
	Palmyra	[U] 20.00	
	<u>Illinois:</u>		
	Wood River	\$ 18.30	
	Cowden	21.03	
	Trilla	21.47	
	<u>Iowa:</u>		
	Fort Madison	[U] \$ 22.75	
	Washington	23.23	
	Marshalltown	23.59	
	Iowa Falls	23.79	
	Garner	[U] 26.50	
	Algona	24.29	
	Spencer	24.46	
	Holstein	24.72	
	<u>Indiana:</u>		
	Terre Haute	\$ 22.03	
	Crawfordsville	22.73	
	Frankfort	23.10	
	Walton	23.46	
	Huntington	24.22	
	<u>Nebraska:</u>		
	Blair	[U] \$ 27.75	
	Fremont	25.28	
	David City	25.41	
	Aurora	25.66	

ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED

RATE IN DOLLARS PER TON

FROM	TO	RATE	
<u>Farmland-Garner, Iowa</u>	<u>Missouri:</u>		
	Louisiana	\$ 15.56	(1) (2)
	<u>Iowa:</u>		
	Washington	11.00	
	<u>Nebraska:</u>		
	Aurora	12.50	
	David City	12.50	

(1) See Note 142

(2) See Note 190

[N] (3) See Note 195

Note 142

If all of the conditions set forth in this note apply, then Carrier shall charge the rates set forth in this note ("Item 142 rates") to the exclusion of any other rate in this tariff. This provision is available to any shipper meeting all of the terms hereof.

Item 142 rates may apply to shipments from producing plant origins on Carrier's system to industrial plant destinations located on Carrier's system at Louisiana, Missouri. The term "industrial plant" means a plant or facility at which ammonia is upgraded into another product or commodity, or at which ammonia is used as a raw material in the manufacture of another product or commodity. A shipper seeking Item 142 rates must submit a written notice to Carrier stating its intention to ship specific volumes of ammonia at Item 142 rates to a specific industrial plant destination during the twelve-month period commencing with the date of the written notification.

[W] ALL RATES HAVE BEEN DECREASED UNLESS OTHERWISE INDICATED

Item 142 rates are determined by the volumes shipped as follows, provided further that the shipments are for the full requirements at the industrial plant destination for a twelve-month period:

<u>Tons/12 months</u>	<u>Rate/ton</u>
40,000 - 49,999	\$14.00 (3)
50,000 - 74,999	13.75 (3)
75,000 - 99,999	13.50 (3)
100,000 - 124,999	13.00 (3)
125,000 - 129,999	12.75 (3)
130,000 or above	12.50 (3)

Shipments shall be made in approximately equal monthly quantities and scheduled by Carrier. If shipper does not ship the nominated volume during the stated twelve-month period, then Item 142 rates shall not apply and Carrier shall charge the otherwise applicable tariff rates. In such event, the party requesting Item 142 rates shall pay on receipt of invoice the difference between the amount it or its designee(s) actually paid for shipment of ammonia pursuant to this note and the amount determined under the otherwise applicable rate(s) for the volume the shipper or its designee(s) actually shipped from each origin point to the industrial plants during that twelve-month period.

Item 142 rates shall be billed to the shipper requesting service hereunder, or to that shipper's designee. The designee's volume to that industrial plant shall be credited against the volume requirements herein. In any event, the party requesting Item 142 rates shall remain responsible for payment of all charges for service provided by Carrier for that party or its designee. Carrier shall have the right to audit the books and records of the party requesting Item 142 rates or its designee.

The services offered by Carrier under Item 190 of this tariff shall be available to shippers requesting Item 142 rates to Louisiana, Missouri, provided that all of the terms and conditions of Item 190 and this note are met.

Note 190

The rates set forth herein ("Item 190 rates") shall apply to shipments via Algona, Iowa from the origins to the destinations listed below meeting all of the conditions set forth herein.

Origins: Fortier, Luling, Donaldsonville, Pollock, Sterlington and Taft, Louisiana; and Garner, Iowa
Destination: Louisiana, Missouri

Ammonia shipped hereunder shall be shipped only via Carrier's pipeline and received only at the above destination(s), and only when such ammonia is destined for internal consumption at facilities located at the above destination(s).

A shipper requesting Item 190 rates must agree to ship, from any one or a combination of the above origins to any one or a combination of the above destination(s), a minimum of 75,000 tons of ammonia each year for a period of four consecutive years or a total of 300,000 tons of ammonia in a four-year period. The shipper requesting Item 190 rates shall refer in its written notification to its intention to ship ammonia under Item 190 rates. The volume requirements must be shipped commencing with the date of written notification to Carrier by the shipper requesting Item 190 rates. Carrier's otherwise applicable retendering charge shall not apply to service hereunder unless shipper fails to meet the volume requirements set forth herein. Shipper shall, at its sole cost and expense, arrange for receipt, storage, and reinjection of ammonia at Algona, Iowa.

In the event shipper fails to ship the volume requirements set forth herein, then the shipper requesting Item 190 rates shall pay on receipt of invoice the difference between the amount it actually paid for shipment of ammonia hereunder and the tariffs applicable at the time of shipment, for the volume actually shipped from the above origins to Algona, Iowa, and from Algona, Iowa, to the above destination(s), and for any additional services (such as retendering charges) that would otherwise apply to such shipments.

Carrier shall have the right to audit the books and records of the party requesting Item 190 rates.

[N] Note 195

This movement is not covered by the Surface Transportation Board (STB) decision decided May 3, 2000, in matter STB Docket No. 41685, ordering a roll-back of certain rates to their 1996 level. This STB decision is under appeal. Pending the outcome of the appeal and any subsequent proceedings, Carrier is reducing the rate applicable to this movement, even though it is not required to do so, subject to the following condition: If Carrier is successful in its appeal of the May 3, 2000, STB decision and the rate roll-back is reversed or invalidated, the rate applicable to this movement will be increased to the rate in existence prior to this reduction and the increased rate will be applied retroactively to movements occurring between the effective date of this reduction and the effective date Carrier increased the rate. In such event, each shipper whose shipments were made at the lower rate will be invoiced for the difference between this reduced rate and the increased rate, plus interest pursuant to the methodology set out in 49 CFR Part 1141.

Explanation of Abbreviations and Reference Marks

- [D] Decrease
- [U] Unchanged rate
- [N] New
- [W] Change in wording

s:daw/tariffs/ammonia/rates10-00

EXHIBIT D

Exhibit F

Contracts

Contract/Agreement Party	Date of Contract/Agreement	Termination Date	Contract/Agreement Type	Consent to Assign Required?
Entergy Arkansas, Inc. (formerly Arkansas Power and Light Company)	10/12/81	Successive 1 yr. evergreen terms began 10/12/87; may be terminated at end of each evergreen term upon not more than 6 mos., nor less than 3 mos., notice	Agreement for Electric Service (M-8 Pump Station, Floral, AR)	Yes
Entergy Arkansas, Inc. (formerly Arkansas Power and Light Company)	07/28/76	Successive 1 yr. evergreen terms began 09/01/88; may be terminated at end of each evergreen term upon not more than 6 mos., nor less than 3 mos., notice	Agreement for Electric Service (M-6 Pump Station, Pine Bluff, AR)	Yes
Butler County Rural Public Power District	03/10/89	At any time upon 90 days notice	Agreement for Electric Service (W-12 Pump Station, David City, NE)	No
Coles Moultrie Electric Cooperative	03/01/95	At any time upon 1 mos. notice	Agreement for Purchase of Power (E-4 Pump Station, Cumberland County, Illinois)	Yes
Illinois Power Company	08/13/02	12 billing periods; thereafter at any time upon 30 days notice	Contract for Power Purchase Option Service Under Rider PPO (Account # 0177534673)	No
			(E-2 Pump Station, Gillespie, IL)	
Illinois Power Company	08/13/02	December 31, 2006	Agreement to Pay Transition Charges (Account # 0177534673)	No
			(E-2 Pump Station, Gillespie, IL)	
Intercounty Electric Cooperative Association	06/15/89	At any time upon 3 mos. notice	Agreement for Purchase of Power (M-12 pump station, Cuba, MO)	No
Intercounty Electric Cooperative Association	07/22/88	At any time upon 3 mos. notice	Agreement for Purchase of Power (M-11 Salem Pump Station)	No

Exhibit F – Contracts – continued
Page 2

Contract/Agreement Party	Date of Contract/Agreement	Termination Date	Contract/Agreement Type	Consent to Assign Required?
Lewis County Rural Electric Cooperative Association	04/01/72	At any time upon 12 mos. notice	Agreement for Purchase of Electric Power and Energy (W-2 Canton Pump Station, Lewis County, MO)	No
Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company)	07/06/89	Successive 3 yr. evergreen terms began 8/28/92; may be terminated at end of each evergreen term upon not more than 6 mos., nor less than 3 mos., notice	Electric Service Agreement (L-1A White Castle Pump Station, Napoleonville, LA)	No
Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company)	06/18/92	Successive 3 yr. evergreen terms began 8/1/95; may be terminated at end of each evergreen term upon not more than 6 mos., nor less than 3 mos., notice	Electric Service Agreement (M-1 Pump Station, Marksville, LA)	No
United Rural Electric Membership Corporation	04/13/70	At any time upon 2 mos. notice	Agreement for Electric Service (Huntington, IN Meter Skid and Building)	No
Employee Benefit Plans listed on Schedule 4.01(o)(ii)(B) to the Agreement	N/A	N/A	Koch Benefit Plans	Not Assignable
Cingular Wireless	1/12/02	January 12, 2003	Wireless Service Agreements (3 agents) Covering analog phones in the Emergency Safety Trailer	No
AT&T	Various Dates	Various dates ranging from 10/10/02 through 08/01/03	Wireless Contracts (9 contracts)	No
Radio Comm Paging	01/15/02	At any time	Paging Service Agreement (month-to-month)	No