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September 12, 2003

**VIA HAND-DELIVERY**

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ENTERED  
Office of Proceedings  
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Public Record

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

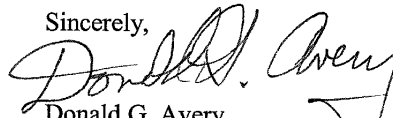
Dear Ms. Anderson:

Pursuant to Ex Parte 638, *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, STB Served April 3, 2003, in lieu of providing a "Confidential" version, we are providing this letter regarding how to redact the "Highly Confidential" Version to provide in-house personnel with a "Confidential" Version.

On the top of each page that we have redactions, we are stamping the page as "Confidential" or "Highly Confidential." Further, the information that has been redacted is set off by "{}." In order to create a "Confidential" version, please redact the language set off by the "{}" on the pages marked "Highly Confidential." Please mark this version "Confidential."

Please do not hesitate to contact us with any additional questions.

Sincerely,

  
Donald G. Avery

208913



BEFORE THE  
SURFACE TRANSPORTATION BOARD

DYNO NOBEL INC.,

Complainant,

v.

KANEB PIPE LINE PARTNERS, L.P.

and

KANEB PIPE LINE OPERATING  
PARTNERSHIP, L.P.,

Defendants.

Docket No. 42081

ENTERED  
Office of Proceedings

SEP 12 2003

Part of  
Public Record

REPLY IN OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL OF  
COUNT I OF THE COMPLAINT, AND  
COUNTER-MOTION FOR SUMMARY DISPOSITION ON COUNT I  
DIRECTING COMPLIANCE WITH RATE AGREEMENT

PUBLIC VERSION – INFORMATION SUBJECT TO  
PROTECTIVE ORDER HAS BEEN REDACTED

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Dated: September 12, 2003

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

|                                 |   |                  |
|---------------------------------|---|------------------|
| DYNO NOBEL INC.,                | ) |                  |
|                                 | ) |                  |
|                                 | ) |                  |
| Complainant,                    | ) |                  |
|                                 | ) |                  |
| v.                              | ) |                  |
|                                 | ) |                  |
| KANEB PIPE LINE PARTNERS, L.P.  | ) | Docket No. 42081 |
|                                 | ) |                  |
| and                             | ) |                  |
|                                 | ) |                  |
| KANEB PIPE LINE OPERATING       | ) |                  |
| PARTNERSHIP, L.P., <sup>1</sup> | ) |                  |
|                                 | ) |                  |
| Defendants.                     | ) |                  |
|                                 | ) |                  |
|                                 |   |                  |

**REPLY IN OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL OF  
COUNT I OF THE COMPLAINT, AND  
COUNTER-MOTION FOR SUMMARY DISPOSITION ON COUNT I  
DIRECTING COMPLIANCE WITH RATE AGREEMENT**

Complainant Dyno Nobel Inc. ("DNI") hereby replies in opposition to Defendants' August 1, 2003 Motion to Dismiss Count I of DNI's Complaint (the "*Motion*"). Furthermore, DNI respectfully moves the Surface Transportation Board ("STB")

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<sup>1</sup>The original complaint in this docket named Kaneb Pipe Line Partners, L.P. ("Partners") as the defendant. Subsequently the parties stipulated that Partners' affiliate, Kaneb Pipe Line Operating Partnership, L.P., should also be deemed included as a defendant in this proceeding, and accordingly the caption has been modified for clarity to identify both entities as defendants. Both defendants are collectively referred to in this Reply and Counter-motion as "Kaneb."

or “Board”) for summary disposition in its favor on Count I, which seeks to enforce an agreement entered into between DNI and Kaneb’s predecessor, Koch Pipeline Company L.P. (“Koch”) on October 25, 2000 in settlement of impending litigation (the “Settlement Agreement”).<sup>2</sup> Specifically, DNI hereby requests that the Board promptly prescribe maximum reasonable rates for the transportation of anhydrous ammonia (“AH”) through Kaneb’s pipeline to DNI’s facilities at Louisiana, Missouri (“LOMO”) that comply with that Settlement Agreement.

### **Statement of Facts**

#### **1. DNI’s Complete Dependence on Kaneb for the Delivery of AH.**

DNI owns and operates an ammonium nitrate manufacturing plant at LOMO, where it consumes approximately 150,000 short tons per year of AH, a key ingredient of ammonium nitrate (“AN”). DNI’s manufacturing operations require a steady supply of AH, day in and day out; its needs do not vary significantly on a seasonal basis. *Barton VS* at 5.

Prior to 1988, DNI’s AH shipments were transported by barge from the AH production areas in Louisiana to a DNI-owned transloading facility on the Mississippi River, and thence via DNI-owned transfer pipes to cryogenic storage tanks at LOMO,

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<sup>2</sup>The Settlement Agreement was memorialized in a letter agreement dated October 25, 2000, and in an implementing tariff provision published shortly thereafter by Koch. The letter agreement is submitted herewith as Exhibit 2 to the accompanying Verified Statement of Curtis C. Barton (“*Barton VS*”), and the tariff provision (Note 195) is included in Exhibit 3 thereto.

which is approximately two miles inland. *Barton VS* at 5, 14. However, as Mr. Barton explains, such shipments – like other commerce on the Mississippi River – were subject to periodic interruption by ice or flooding. Moreover, the facilities required to transload AH, and the cryogenic storage tanks needed to keep the plant running between deliveries (as well as to cover the periodic interruptions of barge service), were expensive to maintain and created an increased risk of accidents because of the extra handling involved. *See id.* at 6.

In 1986, the Gulf Central Pipeline Company (“GCP”), Koch’s (and Kaneb’s) predecessor as operator of the pipeline, agreed to build a “lateral” pipeline from its nearby main line to LOMO, {

}. *Barton VS* at 5-6. Once the lateral pipeline became operational in 1988, DNI had no further need for its trans-loading dock and transfer piping, and therefore relinquished its easement for the piping and sold its dock to an unrelated third party. The cryogenic storage tanks at LOMO were also rendered unnecessary, inasmuch as the pipeline offered instantaneous,<sup>3</sup> 365-day a year deliveries; accordingly DNI emptied and decommissioned them. At this point, those tanks would have to be torn down and replaced if on-site storage again became necessary.

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<sup>3</sup>As Mr. Barton explains, {

}. *Barton VS* at 6.

As a result, Kaneb's pipeline has become the only means available to DNI to deliver the AH it needs from the AH production areas in Louisiana and overseas.<sup>4</sup>

## **2. Negotiation of the October 25, 2000 Settlement Agreement.**

In 1996, Koch – which in the meantime had purchased the AH pipeline from GCP – increased its rates for the transportation of AH to various points along its line, including DNI's LOMO plant. *See* Docket No. 41685, *CF Industries, Inc. v. Koch Pipeline Company*, STB served May 9, 2000, at 4. In response to these increases, CF Industries Inc. ("CFI") and Farmland Industries, Inc. ("Farmland"), the two largest shippers on the pipeline, filed maximum rate complaints against Koch in Docket No. 41685. *Barton VS* at 8.

On May 9, 2000, the Board found the increased rates to be unreasonable and ordered Koch to roll back its 1996 rate increase, as it applied to most destinations, and to refund the increases that had been paid during the litigation. *Id.* at 29. Koch complied but immediately sought judicial review of the decision.

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<sup>4</sup>Mr. Barton testifies that DNI has no assurance that it could restore its barge transload capability, even if it wanted to, inasmuch as it owns neither the land along the riverbank where a new transload dock would have to be built nor the land on which new transfer piping would have to be laid, and DNI does not enjoy the power of eminent domain. *Barton VS* at 15-16. Assuming however that the requisite land could be obtained and such facilities could be rebuilt, Mr. Barton explains, the added capital and operating costs DNI would have to incur in order to resume barge deliveries would translate into a per-ton premium of more than { }, making barge service far more expensive than pipeline service, even after the disputed rate hike by Kaneb. *Barton VS* at 15. Mr. Barton also explains why neither rail transport nor truck deliveries would be a viable alternative for the volumes and distances involved. *Barton VS* at 16.

Because neither CFI nor Farmland shipped AH to LOMO, and DNI had not been a party to Docket No. 41685, DNI's LOMO rate was not covered by the Board's May 9, 2000 decision, and accordingly Koch did not immediately reduce that rate. When DNI realized that CFI and Farmland were no longer subject to the rate increase, DNI contacted Koch seeking a roll back of the rate increase at the LOMO plant. In pressing its case to Koch, DNI noted that LOMO was even more captive to the pipeline than CFI at Hermann, MO, where the STB in Docket No. 41685 nevertheless found barge transportation to be ineffective as a competitive constraint on Koch's rates. DNI indicated that it was prepared if necessary to file its own maximum rate complaint against Koch in order to receive the same relief as CFI and Farmland had, *to-wit*, reparations and a prescribed roll-back. *Barton VS* at 8-9.

In order to avoid additional litigation regarding the rate increase, Koch and DNI agreed to a compromise arrangement that would put DNI in essentially the same position as CFI and Farmland on a prospective basis, but which would not require Koch to pay DNI immediate refunds on past shipments, as it had been required to do for CFI and Farmland. In particular, Koch agreed voluntarily to reduce DNI's rate to the level in effect before the 1996 increase, and to maintain it at that reduced level as long as it was required to keep the CFI and Farmland rate reductions in place,<sup>5</sup> provided that DNI

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<sup>5</sup>Specifically, Koch agreed to maintain the DNI rate reduction "pending the outcome of the appeal and any subsequent proceedings" (*Barton VS* at 11 and Koch tariff (continued...))

promised to pay the higher amount retroactively if and to the extent that Koch's appeal were successful and CFI and Farmland were required to make such retroactive payments. DNI agreed in return not to file its own complaint at that point, and not to press for refunds on past shipments until after Koch's appeal was decided. *Barton VS* at 11. As noted above, that Settlement Agreement was memorialized in the letter agreement and tariff provision attached to the *Barton VS*, as Exhibit 2 thereto.

### **3. Subsequent Events.**

On July 27, 2001, the United States Court of Appeals for the District of Columbia Circuit affirmed the STB's decision to roll back rates in Docket No. 41685. *See CF Industries, Inc., et al. v. Surface Transportation Board*, 255 F.3d 816, 832 (D.C. Cir. 2001). As a result, the rate rollbacks ordered in that docket remained in effect. Because neither Koch nor Kaneb as its successor has since sought relief from the prescriptions from the STB, those prescriptions remain in effect today. And because the ruling in Docket No. 41685 remains in effect, so too does the Settlement Agreement. *See Barton VS* at 12. Consistent therewith, Koch kept the LOMO rate roll back in place for more than a year following the Court of Appeals decision. *Id.*

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<sup>5</sup>(...continued)

note 195, attached thereto as Exhibit 3), thus tying the LOMO rate to the prescribed rates, which of course could have been increased thereafter either as a result of a Koch victory in its appeal or as a result of "subsequent proceedings" before the STB in which Koch could seek to have the prescription modified or lifted.

As previously noted, the Settlement Agreement left for subsequent resolution the issue of DNI's entitlement to reparations. Following issuance of the court's decision, DNI and Koch entered into negotiations with respect to DNI's reparations claim for the period prior to October 25, 2000, when DNI's rate was rolled back. On February 28, 2002, DNI and Koch executed a "Final Settlement Agreement" {  
}. *Barton VS* at 12 and Exhibit 4 thereto. As a result, DNI never had to initiate a reparations case against Koch before the STB.

Effective November 1, 2002, Kaneb purchased the entire pipeline from Koch. In §2.02(f) of the purchase agreement, Kaneb expressly agreed to assume all agreements "exclusively related" to the pipeline service. *See* Counsel's Exhibit 3 at 8.

Initially, Kaneb maintained in place Koch's rates, including the \$12.50 industrial rate applicable to DNI's shipments. *Barton VS* at 13. However, in March of 2003, Kaneb published and distributed tariff sheets purporting to impose increases on virtually all of its common carrier rates, including the rates prescribed in Docket No. 41685 and the rate covered by the Settlement Agreement with DNI. *See* L.P.S.C. No. 2, Issued on March 10, 2003 (*Barton VS* at 13 and Counsels' Exhibit 4). Kaneb has to this day never sought Board approval to increase these prescribed rates and contract rates.

The increases in DNI's rate on shipments from Louisiana origins ranged from 60% to 68%.<sup>6</sup>

Because of this significant increase in rates that violated the Settlement Agreement, DNI filed its complaint in this docket on June 16, 2003, alleging a violation of the contract rate policy, unreasonable discrimination, and rates exceeding levels permitted under the Board's "Constrained Market Pricing" ("CMP") maximum rate standards.<sup>7</sup>

### **Summary of Argument**

DNI respectfully submits that the language of the Settlement Agreement between DNI and Koch is clear on its face, and indisputably prohibits the pipeline from increasing its rate on DNI's shipments for so long as CFI's and Farmland's rates remain subject to the prescription in Docket No. 41685. The subsequent conduct of DNI and Koch corroborate that interpretation of their agreement. Furthermore, the language of the Purchase Agreement between Koch and Kaneb is also clear on its face, and unambiguously required Kaneb to assume and be bound by Koch's agreements that related exclu-

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<sup>6</sup>The old rate was \$12.50 from all origins (*Barton VS* at 8.) The new rates varied by origin and ranged from \$19.99 to \$21.04 for Louisiana origins. The rate from Garner, IA to the north almost doubled, to \$24.11. Counsel's Exhibit 4.

<sup>7</sup>Subsequently, on August 1, 2003, CFI filed a separate complaint seeking confirmation that the rates prescribed in Docket No. 41685 remain the lawful rates for its shipments to the specified destinations, and that Kaneb could not modify those rates by simply publishing a new tariff. That complaint was docketed as No. 42084.

sively to the pipeline, as the Settlement Agreement plainly does.<sup>8</sup> The applicability of the Board's Contract Rate Policy ("CRP") to pipeline rates is of course a question of law and policy, not fact. Therefore, there are no material facts in dispute and this claim is suitable for summary disposition on the merits.

Turning to the pivotal legal and policy issue raised by Kaneb in its Motion to Dismiss – whether the CRP should be applied to pipeline rates subject to the Board's jurisdiction – DNI will show that all of the economic and regulatory policy reasons that led the Interstate Commerce Commission ("ICC") to promulgate the CRP, and to use it to hold railroads to their rate commitments, remain fully applicable to pipelines, including the AH pipeline operated by Koch and, now, by Kaneb. Congress' subsequent action in transferring jurisdiction over railroad rate agreements to the courts, far from negating or repudiating the CRP as implied by Kaneb, actually constituted a ringing endorsement of its underlying policies and objectives. It would therefore be perverse if the STB were now to disclaim the applicability of the CRP to the pipelines it regulates, and thereby effectively grant those entities *carte blanche* to walk away from their rate agreements, a "freedom" not shared by other carriers subject to STB jurisdiction, or, for that matter, by the other pipelines and utilities that are subject to FERC jurisdiction.

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<sup>8</sup>Kaneb's market dominance over DNI's AH shipments, if deemed relevant to the STB's application of its Contract Rate Policy ("CRP") to hold pipelines to their commitments, is also beyond dispute, as explained above and as shown in *Appendix A* hereto and in Mr. Barton's testimony. *Barton VS* at 9, 14-17.

Kaneb's other argument against enforcement of the Settlement Agreement against it – that carriers subject to rate prescription orders are always free to change prescribed rates without prior approval so long as the changed rates are “reasonable,” so that the CFI/Farmland increases are not barred by the Docket No. 41685 prescription – is dead wrong, for it ignores over seventy years of jurisprudence beginning with *Arizona Grocery Co. v. Atchison, T. & S.F. Ry.*, 284 U.S. 370 (1932) (“*Arizona Grocery*”).<sup>9</sup>

For the foregoing reasons, DNI petitions the Board for summary disposition ordering Kaneb to restore DNI's \$12.50 per ton industrial rate as required by the Settlement Agreement.<sup>10</sup>

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<sup>9</sup>If Kaneb is also arguing that the Docket No. 41685 rate prescriptions applied only to Koch and therefore ceased to apply once Kaneb acquired the pipeline, that argument is likewise dead wrong, for all the reasons discussed *infra* at pages 19 to 20 and at note 15.

<sup>10</sup> Such relief would of course be without prejudice to Kaneb's right, under that Agreement, to once again increase DNI's rate when and if it successfully petitions the Board for relief from the Docket No. 41685 prescriptions.

Although as Kaneb notes the presumption in favor of contract rate enforcement established by the CRP was “rebuttable,” the CRP itself indicated that for rate agreements entered into after November 9, 1978, only “unusual and compelling circumstances” would suffice to excuse a carrier from honoring its commitments, citing the “*Mobile-Sierra*” doctrine applied by FERC to rate agreements by public utilities and natural gas pipelines. The presumption in favor of enforceability established by the latter doctrine has been characterized by the courts as “practically insurmountable.” *Potomac Electric Power Co. v. FERC*, 210 F.3d 403, 407 (D.C. Cir. 2000). In any event, Kaneb, though vigorously opposing enforcement of the Settlement Agreement against it, has not claimed the existence of any such “unusual and compelling circumstances” that might justify excusing it from compliance.

## Argument

### **A. DNI's Count I CRP Claim Is Ripe for Summary Disposition.**

In determining whether summary disposition is appropriate, the test is “whether the record, when viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Ghane v. West*, 148 F.3d 979, 981 (8<sup>th</sup> Cir. 1998) (citations omitted). All inferences must be made in favor of the nonmoving party. *Id.* The nonmoving party, however, “may not merely rest upon allegations or denials in its pleadings, but must set forth specific facts by affidavits or otherwise showing that there is a genuine issue for trial.” *Id.*

DNI's CRP claim is based on contract interpretation. Contract interpretation is “amenable to summary judgment” because contract interpretation is a matter of law. *See Government Systems Advisors, Inc. v. U.S.*, 847 F.2d 811, 812 n.1 (Fed. Cir. 1988).

While most of the case law addressing summary disposition arises in judicial proceedings, the Board has entertained requests for summary disposition in appropriate circumstances.<sup>11</sup> This is such a case: there is no genuine issue as to a material

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<sup>11</sup> See e.g. Docket No. 42057, *Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, STB served April 4, 2003; Docket No. WCC-105, *DHX, Inc. v. Matson Navigation Company and Sea-land Service Inc.*, STB served December 21, 2001; Docket No. 42017, *Konica Imaging U.S.A.*, (continued...)

fact regarding Count I that might require the submission and consideration of further evidence, and as will be seen, DNI is entitled to summary disposition as a matter of law and sound regulatory policy.<sup>12</sup>

**B. Kaneb has Market Dominance over DNI's Shipments of AH to LOMO.**

In Docket No. 41685, the Board – while acknowledging that market dominance is not a statutory prerequisite for its exercise of maximum rate jurisdiction over pipelines – ruled as a matter of policy that it would not intervene in the marketplace to prescribe rates where competitive alternatives to the pipeline exist and exert a meaningful constraint on the pipeline's ability to set excessive rates. *See* Docket No. 41685, *CF Industries Inc. v. Koch Pipeline Co.*, STB Served May, 14, 1998, at 4-5.

It is by no means clear that the same policy considerations would or should apply when application of the CRP, rather than CMP, is at issue; the efficient functioning of the pipeline transportation market would be ill-served by allowing pipelines to renege on their contractual commitments, regardless of whether they face competition. Be that as it may, however, the STB need not decide in this case whether market dominance is a

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<sup>11</sup>(...continued)

*Inc. v. Willig Freight Lines, Inc.*, STB served Oct. 16, 2000; Finance Docket No. 33381, *Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company*, STB served May 6, 1997.

<sup>12</sup>The Board has jurisdiction over DNI's complaint against Kaneb under 49 U.S.C. § 15301(a) and as demonstrated in Appendix A, Kaneb has market dominance over DNI's traffic (if that is deemed relevant to application of the CRP). Therefore, the Board may prescribe rates in this case.

prerequisite for applying the CRP, for as detailed in *Appendix A* hereto, Kaneb's market dominance over DNI's AH traffic is manifest.

**C. The Settlement Agreement Bars the Rate Increase Imposed on DNI by Kaneb.**

**1. The Settlement Agreement Unambiguously Ties Changes in DNI's Rate to Changes in the Docket No. 41685 Rate Prescriptions, and Remains in Effect Until Those Prescriptions Are Lifted.**

The October 25, 2000 letter from Koch to DNI confirming the parties' Settlement Agreement explicitly states that

[Koch] has agreed to reduce its rates 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 . . . to bring these rates into parity with other rates on the pipeline recently reduced pursuant to a decision from the Surface Transportation Board . . . in Docket No. 41685.

*Barton VS*, Exhibit 2, at 1. From DNI's standpoint, of course, the rate rollback Koch implemented pursuant to the Settlement Agreement put it in the same position, prospectively, as if it had participated in Docket No. 41685 (or pursued a successful follow-on rate case, as it had threatened to do). Indeed, without more, it arguably would have put DNI in a superior position: if Koch's appeal were successful and the Docket No. 41685 rate prescriptions were vacated, Koch might well have had a claim for retroactive reinstatement of its original rates, *cf. Iowa Power & Light Co. v. United States*, 712 F.2d 1292 (8th Cir. 1983). Because DNI's reduction had not been Board-ordered, however,

Koch would have had no basis for recouping its rollback from DNI. To protect Koch against this possibility – and thereby tie the fate of DNI’s rate even more closely to that of the rates being paid by the Docket No. 41685 complainants – DNI agreed that if Koch’s appeal were successful it would voluntarily reimburse Koch for the rate reduction it had enjoyed under the Settlement Agreement, “conditioned upon [Koch’s] other interstate shippers being similarly obligated.” *Barton VS*, Exhibit 2, at 1.

The Settlement Agreement did not place DNI in the same position as the Docket No. 41685 complainants on a *retrospective* basis, of course, since Koch did not commit to pay DNI reparations on its shipments prior to October 25, and in fact DNI did not receive any reparations at that time. *Barton VS* at 10-11. However, the parties did agree that if Koch’s appeal were unsuccessful, DNI could at that time, if necessary, prosecute a maximum rate case to obtain reparations, notwithstanding the two-year statutory limitation that might otherwise have barred such a claim. *Barton VS* Exhibit 2, at 2.

As the Board is aware, its May 9, 2000 decision in Docket No. 41685 was affirmed by the United States Court of Appeals for the DC Circuit on July 27, 2001. As a result, the Board’s prescription of reduced rates in Docket No. 41685 remained in effect, and in accordance with the Settlement Agreement between DNI and Koch, so did DNI’s reduced rate.

Koch was of course free to come back to the Board to seek modification or vacation of the Docket No. 41685 prescription, notwithstanding the Court of Appeals' affirmance of that prescription. *Arizona Grocery*, 284 U.S. at 387. Had it done so successfully, it could have applied a corresponding increase to DNI's rate, for as Note 195 to Koch's tariff implementing the Settlement Agreement makes clear, Koch was only promising to maintain DNI's rate reduction until such time as Koch succeeded in overturning the prescription, either by virtue of "the outcome of the appeal" or in "any subsequent proceedings."<sup>13</sup> However, Koch never petitioned the Board to modify its May 9, 2000 prescriptions, and accordingly those prescriptions remain in full force and effect. And because the Docket No. 41685 rate prescriptions have never been modified in any subsequent proceedings, the Settlement Agreement likewise remains in effect according to its terms, and requires maintenance of the full rate rollback on DNI's traffic, as well.

The actions of DNI and Koch were fully consistent with, and support, this interpretation of the October 25, 2000 Settlement Agreement. As discussed *supra* at page 14, Koch in fact continued its rate reductions in effect following the Court of Appeals' affirmance of the May 9, 2000 decision, both on the CFI and Farmland movements covered by that decision and on the DNI rate covered by the Settlement Agreement. And

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<sup>13</sup> In context the reference to "subsequent proceedings" could only mean proceedings before this Board, either on remand from the court if it did not affirm, or on post-affirmance petition to modify, since the Board alone has the power to prescribe rates for pipelines subject to its jurisdiction, or to modify its prescriptions of such rates.

DNI did in fact press its delayed reparations claim against Koch, culminating on February 28, 2002 in a settlement of that claim { }.

Kaneb lamely asserts in its *Motion* that the Settlement Agreement between Koch and DNI has long since “expired” – that it was only to last until Koch’s appeal was decided, at which point, if the Board’s decision were affirmed, DNI would have to file a complaint within 60 days if it wished to keep its rate reduction. *Motion* at 9-11. This reading makes no sense, however, since the only thing being tolled was the two-year limitation, and that limitation applies only to reparations, and not to requests for rate prescriptions on future movements, which may be filed at any time.<sup>14</sup> Moreover, Kaneb’s self-serving reading is completely at odds with the explicit language of Note 195, which speaks of the agreed rate reduction as remaining in effect, not only during the appeal, but also during *any subsequent proceedings* (emphasis added). And finally, Kaneb’s reading is belied by Koch’s actions following the Court of Appeals’ decision, since if Kaneb’s reading were correct, Koch could, and presumably would, have restored its original rate increase on DNI’s traffic promptly after the Court of Appeals issued its decision, and, in any event, once the sixty-day grace period referred to in the October 25 letter had passed.

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<sup>14</sup>Indeed, since DNI would have had no basis for challenging Koch’s rate increase on a prospective basis until Koch tried to increase the LOMO rate again, requiring it to file such a challenge within 60 days of the Court of Appeals’ ruling, even though Koch had not yet tried to restore its prior rate increase, would have been nonsensical.

In short, there can be no reasonable doubt that the October 25, 2000 Settlement Agreement between Koch and DNI remains in effect according to its terms, unless and until the Board's Docket No. 41685 rate prescriptions are lifted.

**2. The Rate Prescriptions Imposed in Docket No. 41685 Remain In Effect, and Bind Kaneb as Successor Operator of the Koch Pipeline.**

It is a matter of record that the Board has never issued a decision, at Koch's or Kaneb's request or otherwise, modifying or lifting the rate prescriptions it promulgated in its May 9, 2000 order. Nor did that order itself specify an expiration date, or provide a mechanism for periodic self-implementing adjustments. Thus the May 9, 2000 prescriptions remain in effect and unchanged. Nevertheless, Kaneb argues that Koch, and now it, have always been free to file new and higher rates for the traffic covered by those prescriptions, so long as the basis for the higher rates is "changed circumstances" rather than disagreement with the original prescription. *Motion* at 6-9. Because its April 1, 2003 rate increases on the CFI and Farmland traffic were therefore legal, Kaneb argues, the predicate for DNI's invocation of its Settlement Agreement disappears. *Id.*

Kaneb's self-help argument is, to put it bluntly, preposterous. In *Arizona Grocery*, the Supreme Court described in great detail the legal and practical effects of a rate prescription on a carrier's pricing freedom:

The exaction of unreasonable rates by a public carrier was forbidden by the common law. . . . The public policy which underlay this rule could, however, be vindicated only in an action brought by him who paid the excessive charge to re-

*cover damages thus sustained. Rates, fares, and charges were fixed by the carrier, which took its chances that in an action by the shipper these might be adjudged unreasonable and reparation be awarded. . . .*

[The Interstate Commerce Act] did not take from the carriers their power to initiate rates; that is, the power in the first instance to fix rates or to increase or to reduce them. . . . In order to render rates definite and certain, and to prevent discrimination and other abuses, the statute required the filing and publishing of tariffs specifying the rates adopted by the carrier, and made these the legal rates; that is, those which must be charged to all shippers alike. Any deviation from the published rate was declared a criminal offense, and also a civil wrong giving rise to an action for damages by the injured shipper. Although the act thus created a legal rate, it did not abrogate, but expressly affirmed, the common-law duty to charge no more than a reasonable rate, and left upon the carrier the burden of conforming its charges to that standard. In other words, the legal rate was not made by the statute a lawful rate—it was lawful only if it was reasonable. Under section 6, the shipper was bound to pay the legal rate; but, if he could show that it was unreasonable, he might recover reparation. . . .

*Specific rates prescribed for the future take the place of the legal tariff rates theretofore in force by the voluntary action of the carriers, and themselves become the legal rate. As to such rates, there is therefore no difference between the legal or published tariff rate and the lawful rate. The carrier cannot change a rate so prescribed and take its chances of an adjudication that the substituted rate will be found reasonable. It is bound to conform to the order of the Commission. If that body sets too low a rate, the carrier has no redress save a new hearing and the fixing of a more adequate rate for the future. It cannot have reparation from the shippers for a rate collected under the order upon the ground that it was unreasonably low. This is true because the Commission, in naming the rate, speaks in its quasilegislative capacity.*

*Arizona Grocery*, 284 U.S. at 383-88 (emphasis added, footnotes and citations omitted).

Thus there is a fundamental distinction between carrier-made rates, on the one hand, and prescribed rates, on the other. So long as the Board has not prescribed a rate (or a maximum rate) for a particular movement, the carrier handling that movement remains free to set whatever rate it chooses, subject to the risk that it might subsequently be called upon to defend that carrier-made rate as reasonable. Once the Board has prescribed a rate, however, the carrier loses its pricing freedom as to that rate. It cannot, as the Supreme Court put it, “change a rate so prescribed and take its chances of an adjudication that the substituted rate will be found reasonable.” Because that is precisely what Kaneb is claiming the right to do, its claim – and the April 1 rate increases it purported to impose on the movements covered by the Docket No. 41865 prescriptions – should be summarily rejected.<sup>15</sup>

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<sup>15</sup>There is no basis in the statute, in *Arizona Grocery*, or any of the caselaw since then, for Kaneb’s assertion that carrier-made changes in prescribed rates are permissible if based on changed circumstances. Notably, if such an exception to *Arizona Grocery* existed, the Burlington Northern and Santa Fe Railway would have had no need to approach the Board for relief from the extant prescriptions in Docket No. 41185, *Arizona Public Service Co. & PacifiCorp v. The Burlington Northern & Santa Fe Rwy. Co.*, STB Served May 12, 2003 and Docket No. 41191, *West Texas Utilities Co v. The Burlington Northern & Santa Fe Rwy. Co.*, STB Served May 29, 2003; it could simply have increased those prescribed rates on its own, based on its claims of changed circumstances.

It is not clear whether Kaneb is also suggesting that the Docket No. 41685 prescription applied only against Koch and therefore disappeared with the sale of the pipeline to Kaneb. If it is, suffice it to say that there is no support in the case law for that argument, either. To the contrary, in every case DNI has been able to locate in which  
(continued...)

**3. The Settlement Agreement is a Koch Agreement “Exclusively Related” to the Pipeline Which Kaneb Explicitly Agreed to Assume.**

Kaneb argues that because it is not a signatory to the October 25, 2000 Settlement Agreement between DNI and Koch (which is hardly surprising since Kaneb had no connection to the pipeline at that time), it has no “privity” and therefore cannot be bound by any of the commitments the parties made therein to one another, whether or not the Agreement by its terms remains in effect. *Motion* at 11-16.

Kaneb is mistaken. It is indeed bound by the Settlement Agreement, because in the Purchase Agreement between Koch and Kaneb, Kaneb explicitly agreed to assume an entire class of Koch contracts that includes the Settlement Agreement. Specifically, under Section 2.04 of the Purchase Agreement, Kaneb agreed to “assume all rights and obligations arising after the [closing] under the . . . Contracts.” The term “Contracts” is in turn defined in Section 2.02(f) as

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<sup>15</sup>(...continued)  
movements covered by Board or ICC rate prescriptions have been taken over by another carrier, the acquiring carrier has been deemed bound by the prescription. *See* Docket No. 41185, *Arizona Public Service Co. & PacifiCorp v. The Burlington Northern & Santa Fe Rwy. Co.*, STB served May 12, 2003; *see also* Finance Dockets 26114 *et al.*, *Potomac Electric Power Co v. Consolidated Rail Corp.*, ICC served Oct. 9, 1987. This is not surprising: because Board prescriptions are necessarily focused on the particular movements at issue, the Board’s rate prescriptions by their very nature must “run with the land” (or more precisely, with the service) rather than being the personal obligations of the corporate entities that happen to be providing the services when the prescriptions are imposed. Any other rule would make the Board’s “quasilegislativ” prescription orders subject to evasion by self-help corporate transactions – especially in the case of pipelines, whose mergers, asset sales, etc. are not subject to Board review.

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.

(Emphasis added.)<sup>16</sup>

Plainly, the Settlement Agreement is an "agreement relating exclusively to" the operation of the ammonia pipeline (as distinct from Koch's other business activities); its sole focus was on the rate Koch would charge and collect from DNI for the pipeline transportation of AH to LOMO. The Settlement Agreement therefore falls squarely within the class of Koch contracts that Kaneb agreed to assume under Sections 2.02(f) and 2.04. The Purchase Agreement is unambiguous in this regard.

Despite the foregoing, Kaneb argues that it did not agree to assume the Settlement Agreement, (a) because the agreement is not listed in Exhibit F, and (b) because Kaneb only agreed to assume responsibility for liabilities accruing under the assumed contracts after the conveyance, and Koch's obligations under the Settlement Agreement arose prior to that date. *Motion* at 13-16.

Neither argument can withstand scrutiny:

1. Kaneb's reliance on Exhibit F overlooks the plain language of Section 2.02(f) quoted above, which requires Kaneb to assume not just the contracts

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<sup>16</sup>The term "Assets" in the Purchase Agreement of course referred principally to the pipeline being acquired by Kaneb, *see* Section 2.02(a).

listed in Exhibit F, but also “any and all” exclusively-related contracts, *including* those listed in Exhibit F. The use of the word “including” necessarily contemplates that there may be other agreements covered by the clause, in addition to those listed in Exhibit F. The Settlement Agreement is such an additional agreement.

2. Kaneb’s argument regarding the temporal limitation on the contractual liabilities it assumed, confuses the date of the contractual undertaking in question with the date of the conduct thereunder giving rise to liability. The Settlement Agreement, and Koch’s undertakings thereunder, did indeed antedate the conveyance of the pipeline to Kaneb; that is by definition true of all of the contracts Kaneb assumed when it purchased the pipeline on November 1, 2002. But the actions giving rise to DNI’s claim thereunder, and to Kaneb’s liability, were plainly Kaneb’s – its imposition of prohibited rate increases on April 1, 2003 – and as such occurred well after the starting point for Kaneb’s responsibilities.

In short, Kaneb’s arguments that it did not assume the Settlement Agreement when it purchased the ammonia pipeline from Koch, will not wash.<sup>17</sup> DNI respect

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<sup>17</sup>While it is obvious that Kaneb would prefer to have avoided responsibility for honoring Koch’s rate commitments to DNI, it should be equally clear that Koch would never have agreed to remain responsible for those commitments after it had sold the pipeline that was its sole means of compliance. In other words, Kaneb’s artificially  
(continued...)

fully requests that the Board find Kaneb responsible for compliance with the October 25, 2000 Settlement Agreement, under the plain language of the Purchase Agreement.<sup>18</sup>

**D. The Contract Rate Policy Remains Applicable to Pipeline Rate Agreements, and Requires Enforcement of the Settlement Agreement Against Kaneb as Successor to Koch.**

During the early part of the last century, the principal focus of railroad regulation in the United States was the prevention of unjust discrimination.<sup>19</sup> To that end, the Interstate Commerce Act required carriers to publish and file their rates and charges in tariffs, and prohibited any deviation from those published rates. *Arizona Grocery*, 284 U.S. at 384.

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<sup>17</sup>(...continued)

narrow reading of the Purchase Agreement's contract assumption clauses not only contravenes the plain language of those clauses, but also leads to a result at variance with the normal, expected outcome of negotiations in such a situation.

<sup>18</sup>Even if Kaneb had not explicitly agreed to assume the class of agreements that included the DNI-Koch Settlement Agreement, the Board could presumably hold Kaneb responsible for compliance with that agreement as a matter of policy because Kaneb is the functional successor of Koch as operator of the common carrier pipeline to which the Settlement Agreement applies, and as such has stepped into Koch's shoes as the single party capable of complying with the agreement. *Cf., e.g., Turner v. Bituminous Casualty Co.*, 244 N.W.2d 873 (1976).

<sup>19</sup>As the Supreme Court explained, "The Interstate Commerce Act ... and all amendments to it, have aimed at wiping out discriminations of all types, ... and language of the broadest scope has been used to accomplish all the purposes of the Act." *United States v. Baltimore & Ohio RR*, 333 U.S. 169, 175 (1948) (citations omitted).

In this regime of strict tariff adherence, there was no place for private contracts between carriers and shippers specifying different rates and terms of carriage; such contracts were simply unenforceable in court in the face of conflicting tariff provisions.<sup>20</sup>

Meanwhile, the regulatory schemes that evolved for other industries, such as interstate natural gas pipelines and electric utilities, adopted a more receptive approach to contracts, including provisions for the filing, review, and approval of contracts that specified the special terms that the regulated company had negotiated with particular customers. As the Supreme Court explained in *Federal Power Commission v. Mobile Gas Service Corp.*, 350 U.S. 332, 338 (1955) (“*Mobile*”):

[The Natural Gas Act] evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the [Federal Power] Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts.

This difference in the regulatory approaches applied to railroads and gas pipelines, the Court went on to explain, arose from a fundamental difference in the industries and in the kind of service they provided:

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<sup>20</sup> *Armour Packing Co. v. United States*, 209 U.S. 56 (1908) (“*Armour*”).

The vast number of retail transactions of railroads made policing of individual transactions administratively impossible; effective regulation could be accomplished only by requiring compliance with a single schedule of rates applicable to all shippers. On the other hand, only a relatively few wholesale transactions are regulated by the Natural Gas Act and these typically require substantial investment in capacity and facilities for the service of a particular distributor. Recognizing the need these circumstances create for individualized arrangements between natural gas companies and distributors, the Natural Gas Act permits the relations between the parties to be established initially by contract, the protection of the public interest being afforded by supervision of the individual contracts, which to that end must be filed with the Commission and made public.

*Id.* at 338-39.

In the second half of the twentieth century, as the railroad industry gradually shed its “retail” business in favor of high-volume, repetitive bulk commodity movements such as unit train coal service, the differences between the natural gas pipeline industry and the railroad industry became less and less significant. Major railroad shippers, such as coal-burning electric utilities, faced the same need for making substantial investments in plants and facilities to receive and handle the commodities they would ship as natural gas distributors did, and felt the same need as those distributors did for a measure of predictability respecting the transportation service they would receive, and the rates they would pay for it. Inevitably, then, railroads and their major freight shipping customers began to negotiate term sheets and letter agreements respecting rates and service, which the railroads would then implement by filing conforming tariffs (*e.g.*,

annual volume, point-to-point unit train tariffs, ostensibly open to any shipper wishing to use them but in reality tailored to the specific needs of a single shipper).

At first, the law and regulatory policies applicable to railroads failed to evolve as the commercial realities had, and the ICC initially expressed the view that private rate agreements, and the reduced rates they typically called for, were discriminatory and hence unlawful. *See, e.g., Contract Rates on Rugs & Carpeting from Amsterdam, N.Y. to Chicago*, 313 I.C.C. 247 (1961).

Despite decisions such as *Contract Rates on Rugs*, large shippers and the railroads wanting their lucrative shipping business continued to negotiate, and operate under individualized agreements. However, the uncertain legal status of private rate agreements made carriers and shippers alike uneasy, and led both sides to press for more explicit authority to enter into such arrangements.

The push for validation of railroad rate agreements occurred both in Congress and before the ICC. The ICC responded first: in Ex Parte No. 358-F, *Change of Policy Railroad Contract Rates* (served November 9, 1978), the ICC announced that henceforth it would no longer view railroad-shipper rate and service agreements as unlawful, and that in its view such arrangements could in fact serve a useful function. Accordingly, it encouraged carriers and shippers to negotiate the terms they needed (as in fact they were already doing), and indicated that when called upon to review such arrangements it would evaluate their reasonableness on a case-by-case basis.

Notwithstanding the ICC's initial change of policy, uncertainty remained regarding the enforceability of such agreements, by either party, in the event the other party became dissatisfied. Particularly troublesome for shippers was the possibility that the railroads would be allowed to file tariffs at variance with their agreements, which would then, under *Armour*, displace the agreed rates.

Responding to these concerns, on February 21, 1980 the ICC issued a further decision elaborating on its treatment of contract rates. Therein, the agency stated:

In regard to contracts entered into after issuance of the Commission's November 9, 1978 policy statement in Ex Parte No. 358-F, we will view the existence of such a contract as creating a presumption that a proposed rate change in excess of the contract rate is unreasonable in violation of the Interstate Commerce Act. However, there may be unusual and compelling circumstances which would rebut this presumption and warrant our upholding a rate change in excess of a contract rate. For example, the Commission might determine that a contract rate should not be enforced if it failed to contribute to the going concern value of the carrier as required by 49 U.S.C. 10701(b) or is likely to imperil the carrier's ability to provide essential rail service to the public. Cf. FPC v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956). ... [C]arriers and shippers should assume that the Commission will give recognition to contractual agreements concerning rates, in the absence of compelling circumstances indicating that enforcement of the agreed rate would be detrimental to the public interest.

Ex Parte No. 358-F, *Change of Policy, Railroad Contract Rates*, ICC Served Feb. 28, 1980, at 4-5. As noted previously, the ICC's invocation of the *Sierra* case as the model for its new contract rate policy was telling, as it effectively brought the ICC's regulatory

approach toward rate contracts into line with that of the Federal Power Commission, under which the presumption of enforceability is “practically insurmountable.”

Shippers and railroads alike reacted favorably to the ICC’s new contract rate policy. Meanwhile, however, Congress was considering proposals to revamp railroad regulation in a far more drastic fashion, a process which ultimately led to enactment of the *Staggers Rail Act of 1980*, Pub. L. 96-448, 94 Stat. 1895 (October 14, 1980). During those legislative deliberations, shipper and carrier representatives pressed Congress, in such legislation, not to disturb their newly-recognized contracting freedom. Indeed, in light of the magnitude of the investment decisions being made in reliance on railroad rate agreements, there was widespread support for making the enforcement of such agreements even more certain than the ICC’s CRP did, by eliminating the “exceptional circumstances” *Sierra-Mobile* defense that the ICC’s February 21 Policy Statement had retained.

Significantly, neither the shipper and carrier representatives appearing before Congress during the deliberations over the *Staggers Act*, nor the members of Congress considering that legislation, ever challenged the ICC’s Contract Rate Policy as going too far. To the contrary, what the ICC had done was welcomed with enthusiasm, and the only question was whether it was necessary to strengthen railroad contract enforcement even more.<sup>21</sup> Congress, of course, answered in the affirmative, enacting

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<sup>21</sup>For example, in reporting out what ultimate became the *Staggers Act*, the Senate Commerce Committee reported:

(continued...)

former 49 U.S.C. § 10713 to vest jurisdiction over the enforcement of railroad rate agreements in the courts, where they would be enforced in the same manner, and with the same certainty, as other agreements – *i.e.*, without regard to whether the agreements had turned out to be profitable for the railroads that had signed them or were otherwise vulnerable to attack under the “exceptional circumstances” standard.

The ICC responded to passage of the *Staggers Act* on November 10, 1980, acknowledging (as of course it had to) that it no longer had any jurisdiction over the enforcement of railroad rate agreements entered into after October 1, 1980, but expressing the view that it should still have a roll in determining the enforceability of rate contracts entered into before that date.<sup>22</sup> Taking that ICC pronouncement out of context, Kaneb suggests that the CRP itself was limited to contracts entered into before October 1,

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<sup>21</sup>(...continued)

The concept of contract rates was strongly endorsed by many witnesses during the course of the Committee’s hearings. Contract provisions offer significant transportation benefits in that they allow for better planning on the part of both shippers and carriers .... The greater certainty provided by contracts, particularly in areas where large rail capital investments are needed, will provide substantial benefits.

Report of the Senate Committee on Commerce, Science, and Transportation on S.1946 (*S. Rep. 96-470*, December 7, 1979), at 25.

<sup>22</sup>Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines - Nationwide*, 364 I.C.C. 360, cited by Kaneb. That view, of course, was subsequently overruled by the courts in light of 49 U.S.C. § 10713(j), which made contracts entered into before October 1, 1980 enforceable in the same manner as contracts entered into after that date, *i.e.*, in court. *See, e.g., Cleveland Cliffs Iron Company v. ICC*, 664 F.2d 568, 591-92 (6<sup>th</sup> Cir. 1981).

1980. Nothing could be further from the truth. The CRP had become a permanent and prominent part of the ICC's ratemaking policy for railroads, and it is apparent that but for Congress' transfer of enforcement jurisdiction to the courts, the ICC stood ready to approve and enforce such agreements from then on. In other words, the policies favoring enforcement of shipper-carrier rate agreements, as articulated in the CRP, have never been repudiated. Rather, they have simply lain dormant since the agency lost jurisdiction to apply them to railroads.

Kaneb also suggests that because the ICC and STB have never applied the CRP to pipeline rates, the CRP must not have been meant to apply to pipelines. But of course there have been only two pipeline rate cases decided by the ICC and STB since 1980, and neither involved a rate agreement for which enforcement was being sought. All that means is that the applicability of the CRP to pipeline rates is an issue of first impression in this docket.

In considering that issue now, the Board should recognize that all of the circumstances justifying enforcement of negotiated rate agreements in the natural gas and electric utility industries, as described by the Supreme Court in *Mobile*, and all of the policy reasons that were seen by the ICC and Congress as supporting enforcement of railroad rate agreements, are equally applicable to the ammonia pipeline operated by Kaneb. Here, as in *Mobile*, there are only a small number of shippers, so that consideration of individual contracts is practicable. Here, as in both the natural gas and railroad

industries, large investments are made by shippers in the facilities needed to handle deliveries, so there is a need to be able to rely on the pipeline's commitments. Here, as in the railroad industry prior to the *Staggers Act*, the courts most likely have no jurisdiction to enforce rate contracts, and accordingly the STB has to step in and do so.

To summarize, there is ample reason for the Board, in the sound exercise of its jurisdiction over ammonia pipelines, to apply its Contract Rate Policy and thereby hold Kaneb to the bargain that Kaneb's predecessor struck with DNI, and that Kaneb assumed when it purchased the pipeline. Simply stated, pipelines subject to STB jurisdiction, like the pipelines subject to FERC jurisdiction and like the railroads, should be held to the bargains they make. Anything short of that result will undermine shipper confidence in contracts,<sup>23</sup> and make doing business with the pipeline that much more difficult and costly – the very transactional costs which the CRP was intended to minimize in the first place.

### **Conclusion**

For the reasons stated herein, the Board should deny Kaneb's August 1, 2003 motion to dismiss DNI's CRP claim. Instead, the Board should grant summary disposition in DNI's favor on that claim, and prescribe maximum reasonable rates for DNI's AH shipments to LOMO that are consistent with Kaneb's commitment to maintain rate parity between DNI and its competitor El Dorado Chemical Company. Further, DNI

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<sup>23</sup>Indeed, since the rate agreement at issue in this docket was entered into in settlement of threatened litigation, a failure to honor it now would also undermine confidence in the settlement process in STB litigation.

requests that the Board award reparations to DNI for the sums it has paid since April 1, 2003 and pendente lite that exceed the levels prescribed, and for such further relief as may be just and reasonable under the circumstances.

Respectfully Submitted,

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Dated: September 12, 2003

(202) 347-7170

### **CERTIFICATE OF SERVICE**

Pursuant to 40 C.F.R. § 1113.3, I hereby certify that on this 12th day of September, I caused a copy of the foregoing Reply in Opposition to Defendants' Motion for Dismissal of Count I of the Complaint, and Counter-Motion for Summary Disposition on Count I Directing Compliance with Rate Agreement to be served by overnight express courier on all parties of record in this proceeding, addressed as follows:

Kaneb Pipe Line Partners, L.P.  
2435 North Central Expressway  
Richardson, TX 75080

and by hand delivery on designated outside counsel, as follows:

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Kathrine L. Henry, Esq.  
Angela Addison Freeman, Esq.  
Van Ness Feldman, P.C.  
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Washington, D.C. 20007

  
Kendra A. Ericson  
An Attorney for Dyno Nobel Inc.

## Appendix A

## Appendix A

### **KANEB PIPELINE'S MARKET DOMINANCE OVER ANHYDROUS AMMONIA DELIVERIES TO DYNO NOBEL'S LOMO FACILITIES**

As witness Barton explains, DNI is completely dependent on Kaneb's pipeline for the delivery of the AH it requires to manufacture Ammonium Nitrate at LOMO. Kaneb of course faces no intramodal competition, as no other pipeline serves the Louisiana production areas that Kaneb serves (or the deep-water AH import facilities in the same area that Kaneb also serves), and no other pipeline serves LOMO. Nor does Kaneb face either product<sup>1</sup> or geographic competition for DNI's AH traffic.<sup>2</sup> That leaves intermodal competition from barges, trucks, or rail carriers.

Unfortunately, Kaneb faces no meaningful intermodal competition for DNI's AH traffic, either, because as witness Barton explains (and as the STB found in

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<sup>1</sup>As witness Barton explains, there are no other raw materials that can readily or competitively be substituted for AH in the production of either Ammonium Nitrate or the explosives derived therefrom, and accordingly LOMO cannot remain in operation without a supply of AH.

<sup>2</sup>{

} See Blue, Johnson & Associates Inc, "Ammonia and the Koch (Kanab) Pipeline" Final Report May 21, 2002 (reprint April 10, 2003), at 5 and Exhibit 7A, attached as Counsels' Exhibit 1. The same studies confirm that AH imported from more distant producers, *e.g.* those located in Canada, cannot be delivered to midwest markets at a competitive cost and thus pose no threat to Kaneb's market. Simply stated, the only viable geographic source for the supplies of AH that DNI requires is the Louisiana area served by Kaneb's pipeline, where both domestically-produced and imported supplies are available.

Docket No. 41685 with respect to all destinations that, like LOMO, lack in-place barge unloading and storage facilities),

- (a) the distances and volumes involved are far too great for trucking to be a practicable alternative on shipments from Louisiana to LOMO, and
- (b) rail deliveries are likewise an ineffective alternative, both because DNI lacks the specialized tank cars required for such shipments and because rail rates are far higher than pipeline rates, even after the Kaneb rate increases at issue.

As previously noted, prior to 1988 DNI received barge deliveries of AH at LOMO, but once pipeline deliveries became available, DNI disposed of its barge delivery facilities. Mr. Barton explains that if DNI now wished to restore its barge delivery capability, {

}, *see* Koch Pipeline Company, L.P. – Anhydrous Ammonia Pipeline, Business Overview, at 41, attached as Counsels’ Exhibit 2. Mr. Barton concludes that restoration of barge service is simply not a viable alternative for LOMO, and that if pipeline service were withdrawn or became prohibitively expensive, DNI would be forced to consider closing the facility. Barton VS at 14-16. In short, Kaneb’s market dominance over DNI’s AH traffic is clear beyond peradventure.

**Barton VS**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

|                                |   |                  |
|--------------------------------|---|------------------|
|                                | ) |                  |
| DYNO NOBEL INC.,               | ) |                  |
|                                | ) |                  |
| Complainant,                   | ) |                  |
|                                | ) |                  |
| v.                             | ) |                  |
|                                | ) |                  |
| KANEB PIPE LINE PARTNERS, L.P. | ) | Docket No. 42081 |
|                                | ) |                  |
| and                            | ) |                  |
|                                | ) |                  |
| KANEB PIPE LINE OPERATING      | ) |                  |
| PARTNERSHIP, L.P.,             | ) |                  |
|                                | ) |                  |
| Defendants.                    | ) |                  |
|                                | ) |                  |

**VERIFIED STATEMENT OF CURTIS C. BARTON**

My name is Curtis C. Barton, and my business address is Eleventh Floor, Crossroads Tower, Salt Lake City, Utah 84144-0103. I am employed by Dyno Nobel Inc. ("DNI") as Global Strategic Sourcing/Regional Sourcing Manager. In that capacity I am responsible for ensuring a reliable and economical supply of the raw materials needed by DNI's Louisiana, Missouri facility (the "LOMO" facility) for the production of ammonium nitrate ("AN"), which in turn is used by DNI at other locations to manufacture industrial explosives. As I shall explain, the primary raw material required for such

production is anhydrous ammonia (“AH”), which is delivered to LOMO by the defendant’s pipeline.

The purpose of my testimony is to recount the events and circumstances that led to the filing of the Complaint in this proceeding. Specifically, I will describe the circumstances that led DNI in 1988 to shift from reliance on barge-delivered supplies of AH to pipeline-delivered supplies at LOMO, and to dismantle and relinquish the facilities it had needed for receipt of barge deliveries. I will recount the events that caused DNI to consider the initiation of a maximum rate case against the Koch Pipeline Company (Koch) – at that time the operator of the defendants’ pipeline – in 2000, and how DNI and Koch negotiated a settlement agreement in October of that year to avoid the need for such litigation. I will describe Koch’s and DNI’s actions to implement and comply with that settlement agreement since it was negotiated, and how the defendants (Kaneb), following their purchase of the ammonia pipeline business from Koch last November, at first seemed to be complying with the settlement agreement but then disclaimed any intent to do so and instead imposed a massive increase in DNI’s rate that violated the agreement. And finally, I will explain in some detail why it would be totally impractical for DNI now to recreate the barge delivery facilities it relinquished after 1988, and why as a result DNI is completely and irrevocably dependent on Kaneb’s pipeline for the supplies of AH it requires at LOMO.

### **Background**

DNI is a closely-held corporation with headquarters in Salt Lake City, Utah, and AN manufacturing facilities in Donora, PA and Geneva, UT (a joint venture), in addition to LOMO. DNI's primary line of business is the manufacture and sale of industrial explosives and related products, which are used in the mining and quarrying industries and also, to a lesser degree, in construction.

AN, which is made from AH and nitric acid, is a key ingredient in most explosives. In 2001, AN-based explosives accounted for 98% of the U.S. industrial explosives sales. See Deborah A. Kramer, "Explosives," U.S. Geological Survey Minerals Information at 1 & Table 1 (copy attached as *Exhibit 1*). Most commercial explosives contain AN in some form; AN is a key ingredient of Ammonium Nitrate Fuel Oil ("ANFO"), one of the most commonly used explosives. ANFO uses the AN as an oxidation accelerator in order to cause the fuel oil to ignite almost instantaneously, causing sudden pressure due to the combustion gases. ANFO is often used in mining to fracture the host rock/ore.

The popularity of ANFO and other AN products is due to their cost effectiveness and safety record as compared with other explosives. Because of that popularity, there are few alternatives to AN in the industrial explosives market.

DNI purchased the LOMO facility in 1985 in order to have a secure and reliable supply of the AN it needed in its industrial explosives business. Since then DNI

has always transferred a portion of the AN produced at LOMO to its other facilities, for further processing and/or packaging in sizes and quantities suitable for mining company use.

Because the capacity of the LOMO facility substantially exceeds DNI's internal needs, DNI has also been able to market a large portion of LOMO's AN production, as well as related products such as nitric acid, in bulk to various chemical manufacturers and distributors such as BASF and Alliant Tech. In marketing to such customers, however, DNI faces competition from other AN producers, and in particular, from El Dorado Chemical Company ("EDC"), which owns and operates a large AN production facility in El Dorado, Arkansas and has entered into a partnership with Orica, DNI's most formidable competitor in the industrial explosives business. (*See the discussion in Exhibit 1.*)

### **The Shift From Barge to Pipeline**

The primary ingredient of AN is AH. AH in turn is made from natural gas. In theory, AH could be manufactured wherever natural gas is available, and in fact some AH has been manufactured in the midwest (especially in Iowa and Oklahoma) for many years for use in agriculture as a direct application nitrogen fertilizer. However, because the most plentiful and inexpensive supplies of natural gas historically were located in the Gulf region, many of the nation's AH production facilities were built there, and today

those facilities, plus overseas production, supply most of the AH consumed in the Midwest, both in agriculture and in industrial applications such as ours at LOMO.

Prior to 1988, LOMO – which is located about two miles west of the Mississippi River, north of St. Louis – received all of its AH supplies, approximately 150,000 short tons per year, via barge service. To handle such deliveries DNI owned and operated a barge unloading dock on the west bank of the Mississippi River, on land leased from the federal government. The dock included hoses, piping, pumps, pressure controls, and all of the other equipment needed to handle a volatile and potentially toxic substance such as AH, at high pressure, safely. DNI also owned transfer piping from the dock to LOMO, over a right-of-way which it leased from various landowners. At LOMO, the transfer piping fed into two large cryogenic storage tanks, one capable of holding 6,000 tons and the other capable of holding 20,000 tons. Such a large storage capacity – roughly two months' supply under normal operating conditions – was deemed necessary in order to protect the manufacturing operation, which requires a steady, day-in and day-out supply of AH, and to keep the plant running when barge deliveries were interrupted for extended periods, for example by extensive ice accumulations during the winters, or by construction on the river locks between New Orleans and LOMO.

In 1986, DNI was approached by representatives of the Gulf Central Pipeline Company (“GCP”), which at that time owned and operated the AH pipeline now operated by Kaneb. GCP’s pipeline (actually, its west leg) ran past our plant, about 27

miles to the west, and GCP offered to build a connecting “lateral line” to our plant, at its own expense, {  
}.

GCP’s proposal was very intriguing to DNI, because pipeline deliveries offered several operational advantages over barge deliveries. For one thing, pipeline deliveries could be *continuous*, day-in and day-out (no waiting for the next barge to arrive, and no risk of interruption of deliveries due to ice accumulation or river lock construction). Also important was that pipeline deliveries would be instantaneous: the pipeline promised that we could inject and withdraw equal amounts simultaneously, instead of injecting first and then waiting for the AH our supplier put in at the southern end to make it through the pipeline to LOMO before extracting it. This was possible because GCP owned the AH in the pipeline (the “line pack”). Instantaneous delivery gave us added flexibility in dealing with transient surges in our AH requirements (surges which otherwise would require retention of at least some onsite storage). These advantages (and our full-requirements commitment to GCP) meant that LOMO would no longer need to maintain and operate its barge unloading dock and transfer piping, or its cryogenic storage tanks.

The prospect of being able to dispense with the storage tanks came at an especially opportune time for DNI, because the 6,000 ton tank was even then in need of

substantial and costly repair and upgrading if it were to be retained in service much longer.

For the foregoing reasons, and because GCP offered attractive transportation rates, DNI accepted GCP's offer. Once the lateral connecting pipe was completed in 1988, DNI began receiving its AH requirements via the pipeline. The 6,000 ton storage tank was immediately emptied and decommissioned. A short time later, once DNI had gained experience and confidence in the reliability of pipeline deliveries, DNI emptied and decommissioned its 20,000 ton storage tank as well, removed its salvageable AH storage equipment from the barge unloading dock, sold the dock itself to a third party, and transferred its lease of the underlying real estate to that same third party. We also dismantled and removed the transfer piping that ran between the dock and LOMO, and relinquished our lease of the right-of-way. At this point, the only parts of the barge-handling infrastructure left at LOMO are the two decommissioned storage tanks. Neither of those tanks is serviceable now, and neither could practicably be brought up to code and recommissioned. Rather, if storage again became necessary at LOMO, the old tanks would have to be torn down, and one or more new, code-compliant tanks built to take its place.

#### **The 1996 Rate Case**

For the first seven-plus years after we began pipeline deliveries of AH to LOMO, the pipeline made no effort to increase its rates, and in fact during that period

GCP instituted a new volume rate schedule for AH shipments to LOMO that provided a sliding scale of rates as annual volumes increased, culminating in a rate of \$12.50 per ton when annual volumes exceeded 130,000 short tons. However, in early 1996, the pipeline – which in the meantime had been purchased by Koch – imposed rate increases averaging about 20% on virtually all of its traffic. (LOMO received a 22% increase.) Shortly thereafter, the largest shipper on Koch’s pipeline, CF Industries, Inc. (“CFI”), filed a complaint before the Board, challenging the increase. Subsequently, Farmland, another large shipper, also filed a complaint against the rate increase.

DNI opted not to join in the litigation over the 1996 increase. Because the rate increase applied to our primary regional competitor, EDC, as well as to us, the 1996 increase did not appear likely to have a significant adverse impact on our competitiveness or market share. Accordingly, DNI continued without protest to ship AH via the Koch pipeline, and to pay the higher rates the pipeline had posted.

#### **The October 25, 2000 Settlement Agreement**

Four years later, in August of 2000, we received a new tariff from Koch in which it announced that it had been required by the STB to roll back its entire rate increases on shipments to several destinations. Included in those destinations was El Dorado, Arkansas, where our competitor EDC receives its AH shipments. LOMO, however, was not included, and was not rolled back. This rate rollback effectively gave EDC a substantial price break as compared to the rate that DNI was paying.

DNI was extremely concerned that the transportation rate disparity that then existed between EDC and LOMO would put DNI at a substantial competitive disadvantage in the market for AN and related products. Accordingly, DNI approached Koch and requested it to roll back its LOMO increase, as it had done on the EDC increase. At first Koch's representatives rejected our request, pointing out that the STB order Koch was complying with did not apply to LOMO, and indicating that Koch continued to believe its rate increases were fully justified and that the agency was wrong to reject them. Koch added that it was appealing the STB's decision in court, and was confident that the decision would soon be overturned, and the rolled-back increases restored.

DNI was not willing to accept the *status quo* indefinitely, nor were we persuaded that the STB's decision would be overturned quickly or that the rate disparity it created for us would be shortlived. We therefore began to examine our options for filing, belatedly, our own complaint against the 1996 rate increase. Upon examining the STB's decision in the CFI/Farmland case, we realized that our LOMO plant was every bit as entitled to rate relief as the locations that did receive such relief – in particular, LOMO was and is completely captive to the pipeline for its AH deliveries, having no competitive alternatives of any kind since its old barge delivery facilities were abandoned and relinquished. Since it was the presence or absence of competitive alternatives that determined whether the rate to a particular destination was rolled back in the

CFI/Farmland case, we concluded that we should be able to obtain comparable relief if we filed a case of our own.

When next we approached Koch, we had in hand a draft complaint which we were ready if necessary to file at the STB, and we so indicated to Koch. This seemed to get Koch's attention, and for the first time we began to make some progress. As our negotiations continued, the essential elements of a possible compromise began to emerge.

We made it clear to Koch that DNI's principal and overriding objective was to be put in the same position as Koch's other shippers (including EDC) whose AH shipments had received rate reductions as a result of the STB's decision in the CFI/Farmland litigation. Because the entire rate increase had been rolled back for those shippers, and they were paying the same rates as they had paid before the increase, we needed to have the same rollback so that we, too, could again be paying those pre-increase rates. Because those shippers also received refunds of those increases dating all the way back to 1996, we believed that DNI was also entitled to receive the same refunds.

Koch's representatives were not totally unreceptive to our viewpoint, but they made it clear that if Koch were to agree to a prospective roll-back, DNI would have to agree to pay the higher rate retroactive to the rollback if the CFI/Farmland decision were reversed. DNI indicated that it was willing to pay the higher rate retroactively if the pipeline won its appeal, but only if and to the extent that the other shippers had to do so. We reached agreement on that basis. We were unable to agree on refunds for past

shipments at that time, but agreed to defer the question until after the appeal was decided. Our agreement was reflected in a letter agreement dated October 25, 2000, signed by both parties, a copy of which I have attached as *Exhibit 2*.

Shortly after the October 25, 2000 letter agreement was signed, Koch published a tariff supplement implementing the rate rollback on our traffic. That supplement included a note explaining the basis for the rate reduction and further indicating that the prior rate level could be restored at a later date, depending on the outcome of its appeal "and any subsequent proceedings." A copy of that supplement is attached as Exhibit 3. I can state unequivocally that DNI read those documents at the time, as reflecting the parties' agreement that the future fate of DNI's LOMO rate would henceforth be tied to the fate of the prescribed rates, which of course included the rate paid on shipments to EDC. If and when Koch won the right to increase those rates, it could then increase the LOMO rate, as well. If and when those shippers had to pay the increased rate retroactively, DNI would have to do the same. On the other hand, if Koch lost its appeal, and the EDC rollback remained in place, so would the LOMO rollback. If Koch thereafter went to the Supreme Court, or back to the STB, or in some other proceeding succeeded in regaining the right to increase the CFI/Farmland rates (including in particular the El Dorado, Arkansas rate), and in fact did increase those rates, it could at that point increase DNI's rate as well. In this fashion, DNI would be in essentially the same position vis-a-vis Koch, as it would have been in had it successfully prosecuted its

follow-on complaint case in the fall of 2000. I am confident that Koch's representatives shared our understanding of the deal we had struck.

### **Subsequent Events**

On July 27, 2001, the US Court of Appeals for the DC Circuit affirmed the STB's rate rollback order in the CFI/Farmland case. As a result, Koch was required to keep its rate rollback in place on the CFI and Farmland traffic, and under our settlement it was required to keep the rollback in place on our rate, as well. Koch honored that commitment and in fact kept our rollback in place until it sold the pipeline to Kaneb, more than a year later. At no time during that period, so far as I am aware, did Koch at any point suggest that its obligations under the settlement agreement had ended, through passage of time or otherwise. Indeed, its actions indicated that it understood its obligation to keep our rate tied to the CFI/Farmland rates until such time as those rates were freed from the rollback order.

Following the Court of Appeals' decision, DNI again approached Koch to press its deferred claim for refunds on shipments prior to the October 25, 2000 settlement. After a period of further negotiations, on February 28, 2002 DNI and Koch signed a "Final Settlement Agreement" resolving the refund claim {  
}. A copy of that document is attached as *Exhibit 4*. At that point, DNI had no further unresolved disputes with Koch.

On November 1, 2002, Kaneb purchased the AH pipeline from Koch. Initially Kaneb assumed Koch's existing tariffs, just as Koch had assumed GCP's tariffs when it took over the pipeline from its predecessor. Thus, the rate rollbacks prescribed for or agreed to by Koch remained in place following the sale. In early March of 2003, however, Kaneb circulated to its customers draft revisions to its tariff sheets that specified higher rates to virtually all destinations on the pipeline, including both the destinations to which the STB's CFI/Farmland order applied, and the LOMO delivery point to which our settlement agreement applied. When DNI learned of the impending tariff change we promptly contacted Kaneb to express our strong objections to the increase, especially in view of its disproportionate nature – our rates were slotted to increase by more than 60%, whereas EDC's rates would experience relatively little increase. We also made it clear that the increase in our LOMO rate was prohibited by our settlement agreement with Koch.

Kaneb responded that it was not bound by either the Board's prescription order, which was directed only against Koch, or by any agreement DNI might have negotiated with Koch. On April 1, 2003, Kaneb's proposed tariff sheets went into effect according to their terms. While I am advised that the increase was ineffective with respect to the CFI and Farmland destinations to which the STB's rate order applies, DNI had no choice but to pay the higher rate until such time as it could vindicate its claims under the settlement agreement in an action before the STB. Accordingly, on June 16,

2003, despite its strong aversion to litigation, DNI reluctantly filed its complaint against Kaneb that started this proceeding.

**Lack of Competitive Alternatives for AH Deliveries to LOMO**

Finally, I have been asked to explain why neither barge service nor any other delivery mode is a competitive alternative for DNI at LOMO, and why, as a consequence DNI is completely captive to Kaneb's pipeline for the delivery of its AH requirements.

As I mentioned earlier, when DNI gained the ability to receive AH deliveries via the pipeline in 1988, it disposed of the facilities it had formerly maintained to handle AH deliveries by barge, and relinquished its leases and access rights for the land such facilities required. In order to re-establish the ability for the LOMO plant to receive ammonia via barge, the following would have to be completed:

{

}

The total capital cost of restoring barge delivery capability at LOMO is thus  
estimated to range from {

}

The foregoing assumes that DNI could in fact obtain the necessary land and

governmental permissions to construct a new barge unloading facility on the Mississippi River, and the piping necessary to connect that facility to LOMO. In reality, of course, DNI has no assurance that landowners would be willing to sell or lease suitable property, or that licensing authorities would be willing to sanction construction of what some would regard as an inherently hazardous new facility.

Nor can DNI practicably obtain AH from local sources, or transport it via rail or truck, and thereby avoid reliance on the pipeline. Because local production of AH in the midwest falls far short of local demand, the price spread on AH between the Louisiana and overseas sources served by Kaneb, on the one hand, and midwest sources on the other, greatly exceeds Kaneb's pipeline rates, even after Kaneb's April 1, 2003 rate increase. Obtaining AH from more distant non-Kaneb sources, even if the AH were more competitively priced, would require DNI to build new facilities to handle rail deliveries, invest in new AH tank cars, and pay rail rates that substantially exceed Kaneb's pipeline rates. Specifically, DNI estimates that the cost of the necessary rail delivery/transfer facility alone would be approximately {

} In addition, DNI understands that rail delivery necessarily involves a higher risk of accidental AH release than pipeline delivery does, because of the need to connect and disconnect unloading hoses to the tank cars. This would presumably increase DNI's insurance costs.

{

—

}

The bottom line is that for DNI's LOMO facility, pipeline deliveries of AH are the only viable option. If pipeline service became unavailable, the cost of developing substitute transportation options would make LOMO so costly to operate that DNI would have to give careful consideration to shutting it down altogether. (Whether we could do that might well turn on whether we could find another source of supply for our AN requirements – whether, for example, we could at that point negotiate a partnership with one of our competitors with a more favorably situated AN facility to purchase our supplies from them rather than continuing to manufacture our own.)

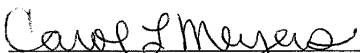
VERIFICATION

STATE OF UTAH                     )  
                                          ) SS:  
COUNTY OF SALT LAKE         )

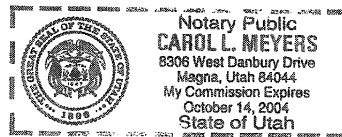
CURTIS C. BARTON, being duly sworn, deposes and says that he has read the foregoing verified statement, knows the contents thereof, and that the same are true as stated.

  
Curtis C. Barton

Subscribed and sworn to before me  
this 11th day of September, 2003.

  
Notary Public in and for the State of Utah.

My commission expires Oct 14, 2004



**Barton Exhibit 1**

# Exhibit 1

# EXPLOSIVES

By Deborah A. Kramer

Domestic survey tables were prepared by Feri Naghdi, statistical assistant.

In 2001, U.S. explosives production was 2.38 million metric tons (Mt), 7% less than that in 2000; sales of explosives were reported in all States. Coal mining, with 69% of total consumption, continued to be the dominant use for explosives in the United States. Kentucky, West Virginia, Indiana, Wyoming, and Virginia, in descending order, were the largest consuming States, with a combined total of 46% of U.S. sales.

## Legislation and Government Programs

After completing an investigation into dumping of ammonium nitrate from Ukraine that was begun in 2000, the U.S. International Trade Commission (ITC) issued its final determination in August 2001. The ITC determined that imports of ammonium nitrate from Ukraine were sold in the United States at less than fair market value and that critical circumstances did not exist with regard to these imports. As a result of the negative determination regarding critical circumstances, the duties will not be retroactive and will only apply to ammonium nitrate that has been imported since March 5, 2001. The antidumping duty of 156.29% ad valorem that was finalized by the International Trade Administration in July will be applied (U.S. Department of Commerce, International Trade Administration, 2001; U.S. International Trade Commission, 2001).

## Production

Sales of ammonium-nitrate-based explosives (blasting agents and oxidizers) were 2.34 Mt, which was an 8% decrease from that of 2000, and accounted for 98% of U.S. industrial explosives sales. Sales of permissibles and other high explosives increased slightly (table 1). Figure 1 shows how sales for consumption have changed since 1992. Data for 2001 are not exactly comparable to the 2000 data. One company, Nelson Brothers LLC, did not provide data to the Institute of Makers of Explosives (IME) in 2001, and no estimate for its sales was included in the totals.

Companies contributing data to this report, including those that are not members of the IME, are as follows:

Accurate Energetic Systems LLC  
Apache Nitrogen Products Inc. \*<sup>1</sup>  
Austin Powder Co.  
Baker Atlas International  
Coastal Chem Inc. \*  
Daveyfire Inc.  
Douglas Explosives Inc.

Dyno Nobel Inc.  
El Dorado Chemical Co.  
The Ensign-Bickford Co.  
Explosives Technologies International Inc. (ETI)  
D.C. Guelich Explosives Co.  
General Dynamics Armament Systems  
Jet Research Center  
LaRoche Industries Inc. \*  
Mining Services International Corp.  
Nitram Inc. \*  
Nitrochem LLC  
Orica USA Inc.  
Owen Oil Tools Inc.  
PCS Nitrogen Corp. \*  
St. Lawrence Explosives Corp.  
Schlumberger Perforating Center  
Senex Explosives Inc.  
Slurry Explosives Corp.  
Vet's Explosives Inc.  
Viking Explosives and Supply Co.  
W.A. Murphy Inc.

El Dorado Chemical Co. (a subsidiary of LSB Industries Inc.) announced that it would supply Orica USA Inc. with ammonium nitrate from its Arkansas plant for at least a 5-year period. As part of the agreement, El Dorado would implement some of Orica's proprietary ammonium nitrate technology at the plant. In a separate agreement, Cherokee Nitrogen Co. (a subsidiary of El Dorado) will supply Nelson Brothers with its entire requirements for 83% ammonium nitrate solution from its Alabama plant for at least 5 years. El Dorado also has sold some of its explosives distribution sites to Orica and Nelson Brothers. LSB Industries planned to use the proceeds from the sales to reduce its debt (Green Markets, 2001).

## Consumption

Coal mining, with 69% of total explosives consumption, remained the largest application for explosives in the United States (table 2). Coal production increased to a record level in 2001 according to preliminary data from the U.S. Energy Information Administration. Production in 2001 rose by 4% from 2000 to 1,017 Mt, just slightly above the prior record level set in 1998. The additional production was used to replenish the depleted stockpiles that had resulted after 2 years of declining coal production and increasing coal consumption (Freme, 2002<sup>2</sup>). Production in all three coal-producing

<sup>1</sup>Companies denoted by an asterisk are not members of the IME.

<sup>2</sup>References that include a section twist (§) are found in the Internet References Cited section.

regions—Appalachian, interior, and western—increased. Wyoming, West Virginia, and Kentucky, in descending order, led the Nation in coal production, accounting for 59% of the total, and were among the largest explosives-consuming States, accounting for 31% of total U.S. explosives sales.

Quarrying and nonmetal mining, the second-largest consuming industry, accounted for 13% of total explosives sales; metal mining, 8%; construction, 7%; and miscellaneous uses, 3%. Kentucky, West Virginia, Indiana, Wyoming, and Virginia, in descending order, were the largest consuming States, with a combined total of 46% of U.S. sales (table 3).

According to U.S. Census Bureau statistics, the value of new construction declined by less than 1% based on constant 1996 dollars (U.S. Census Bureau, 2002§). Federal Reserve Board indices indicated that the industry growth rate from 2000 to 2001 for metal mining was -13.4% and that the growth rate for stone and earth minerals was 1.1% (Federal Reserve Board, 2002§).

#### ***Classification of Industrial Explosives and Blasting***

**Agents.**—Apparent consumption of commercial explosives used for industrial purposes in this report is defined as sales as reported to the IME. Commercial explosives imported for industrial uses were included in sales.

The principal distinction between high explosives and blasting agents is their sensitivity to initiation. High explosives are cap sensitive, whereas blasting agents are not. Black powder sales were minor and were last reported in 1971. The production classifications used in this report are those adopted by the IME.

**High Explosives.**—Permissibles.—The Mine Safety and Health Administration approved grades by brand name as established by the National Institute of Occupational Safety and Health testing.

**Other High Explosives.**—These include all high explosives except permissibles.

**Blasting Agents and Oxidizers.**—These include (1) ammonium nitrate-fuel oil (ANFO) mixtures, regardless of density; (2) slurries, water gels, or emulsions; (3) ANFO blends containing slurries, water gels, or emulsions; and (4) ammonium nitrate in prilled, grained, or liquor (water solution) form. Bulk and packaged forms of these materials are contained in this category. In 2001, about 93% of the total blasting agents and oxidizers was in bulk form.

#### **World Review**

An explosion at Grande Paroisse S.A.'s Toulouse, France, ammonium nitrate plant in September destroyed the plant and killed 29 people. TotalFinaElf Group, which owns 80% of Grand Paroisse, began an investigation into the cause of the explosion but had made no determination by yearend. Three theories were being studied the closest to determine the cause—the contamination of ammonium nitrate by other chemicals produced on the site, the explosion of the ammonium nitrate plant leading to the scattering of a mass of metal on the stocks and their detonation, and the explosion of the ammonium nitrate stocks following anomalies in the power supply network (Atofina, 2002§). It is unlikely that the plant will be rebuilt.

#### **Current Research and Technology**

Researchers at the University of California in San Diego have demonstrated a trinitrotoluene (TNT) sensor made of nanowires. The sensor is made of silicon nanowires coated with a polymer that luminesces under ultraviolet light unless it comes in contact with TNT molecules or picric acid, another explosive. This happens because the TNT and picric acid molecules are electron-deficient, and so they take electrons from the silicon polymer whenever it is excited by UV light. This prevents the silicon nanowires from glowing. By monitoring the luminescence, the researchers detected TNT at 4 parts per billion (ppb) in air and 50 ppb in seawater and picric acid at 6 ppb in seawater. The material could be particularly useful because it is stable in air and water, and the nanowires can even be dissolved in paint or sprayed on to filter paper. It would then have the potential to detect explosive traces in the air or water that surrounds them, and results are instantaneous. This sensor also may be used to detect old unexploded weapons that emit trace quantities of explosives into the air (Photonics Spectra, 2001).

Engineers in the Fuels and Lubricants Group of Shell Co. of Australia developed a technique to blend waste oil with ANFO for a product that can be used in blasting. Mines throughout the world produce thousands of liters of waste fuel oil that needs to be disposed of in an environmentally safe manner. By using the fuel oil in a blasting compound, transporting the waste oil is eliminated, the quantity of fuel oil needed for blasting is reduced, and potentially toxic hydrocarbons in waste oil can be destroyed by the high blast temperature. Shell tested the ANFO-waste oil blend at Hamersley Iron's Marandoo mine site, and found that the ratio of waste oil to ANFO blend could be as much as 50-50 without any detrimental effect to the final blasting performance (Mining Engineering, 2001).

#### **Outlook**

The U.S. Department of Energy (DOE) projects a 1.2% decrease in coal production in 2002 followed by a slight increase in production in 2003. Production is projected to decrease in 2002 and 2003 in the Appalachian and interior regions and to increase in the western region. According to the DOE projections, stocks will continue to be drawn down in 2002 to meet consumption needs (U.S. Energy Information Administration, 2002§). Based on the coal production projections, explosives consumption is expected to decline in 2002 and 2003. Although production is expected to increase slightly in 2003, all the increase will be in the western region, which consumes fewer explosives per ton of coal produced because of a lower overburden-to-matrix ratio. The slight gain in production will not outweigh the lower consumption of explosives per ton of coal produced. Aberrations in weather patterns, however, could have a substantial impact on U.S. coal demand, because most of it is used for electricity production.

In the construction and quarrying sectors, a gradual increase in demand for construction aggregates is anticipated on the basis of the expected volume of work on the U.S. infrastructure that will be financed by the Transportation Equity Act for the 21st Century (TEA-21). This work will occur if additional

funding is allocated. TEA-21 Federal budget authorization is linked to revenues, and the revenues decreased in 2001, so budgeting for TEA-21 may decline (U.S. Department of Transportation, Federal Highway Administration, 1998§).

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TABLE 1  
SALIENT STATISTICS OF INDUSTRIAL EXPLOSIVES  
AND BLASTING AGENTS SOLD FOR CONSUMPTION  
IN THE UNITED STATES 1/

(Metric tons)

| Class                         | 2000      | 2001      |
|-------------------------------|-----------|-----------|
| Permissibles                  | 1,530     | 1,640     |
| Other high explosives         | 33,900    | 34,300    |
| Blasting agents and oxidizers | 2,530,000 | 2,340,000 |
| Total                         | 2,570,000 | 2,380,000 |

1/ Data are rounded to no more than three significant digits;  
may not add to totals shown.

Source: Institute of Makers of Explosives.

TABLE 2  
ESTIMATED INDUSTRIAL EXPLOSIVES AND BLASTING AGENTS SOLD FOR CONSUMPTION  
IN THE UNITED STATES, BY CLASS AND USE 1/ 2/

(Thousand metric tons)

| Class                         | Coal<br>mining | Quarrying and<br>nonmetal mining | Metal<br>mining | Construction<br>work | All other<br>purposes | Total |
|-------------------------------|----------------|----------------------------------|-----------------|----------------------|-----------------------|-------|
| 2000:                         |                |                                  |                 |                      |                       |       |
| Permissibles                  | 2              | (3/)                             | (3/)            | (3/)                 | --                    | 2     |
| Other high explosives         | 4              | 15                               | 1               | 12                   | 1                     | 34    |
| Blasting agents and oxidizers | 1,720          | 332                              | 235             | 182                  | 70                    | 2,530 |
| Total                         | 1,720          | 347                              | 236             | 194                  | 71                    | 2,570 |
| 2001:                         |                |                                  |                 |                      |                       |       |
| Permissibles                  | 2              | (3/)                             | (3/)            | (3/)                 | --                    | 2     |
| Other high explosives         | 5              | 15                               | 1               | 12                   | 2                     | 34    |
| Blasting agents and oxidizers | 1,620          | 303                              | 184             | 168                  | 63                    | 2,340 |
| Total                         | 1,630          | 318                              | 185             | 179                  | 65                    | 2,380 |

-- Zero.

1/ Distribution of industrial explosives and blasting agents by consuming industry estimated from indices of industrial production and economies as reported by the U.S. Department of Energy, the Federal Reserve Board the U.S. Department of Transportation, and the U.S. Census Bureau.

2/ Data are rounded to no more than three significant digits; may not add to totals shown.

3/ Less than 1/2 unit.

TABLE 3  
INDUSTRIAL EXPLOSIVES AND BLASTING AGENTS SOLD FOR CONSUMPTION IN THE UNITED STATES, BY STATE AND CLASS 1/

(Metric tons)

| State          | Class                 |                       |                               |           |                       |                       |                               |           |
|----------------|-----------------------|-----------------------|-------------------------------|-----------|-----------------------|-----------------------|-------------------------------|-----------|
|                | 2000                  |                       |                               |           | 2001                  |                       |                               |           |
|                | Fixed high explosives | Other high explosives | Blasting agents and oxidizers | Total     | Fixed high explosives | Other high explosives | Blasting agents and oxidizers | Total     |
|                | Permissibles          |                       |                               |           | Permissibles          |                       |                               |           |
| Alabama        | 33                    | 603                   | 59,400                        | 60,000    | 32                    | 486                   | 47,800                        | 48,400    |
| Alaska         | --                    | 50                    | 12,100                        | 12,200    | --                    | 59                    | 5,420                         | 5,480     |
| Arizona        | 20                    | 548                   | 112,000                       | 112,000   | 34                    | 152                   | 113,000                       | 113,000   |
| Arkansas       | --                    | 201                   | 11,200                        | 11,400    | --                    | 180                   | 12,400                        | 12,600    |
| California     | (2/)                  | 522                   | 41,600                        | 42,100    | 1                     | 817                   | 72,600                        | 73,400    |
| Colorado       | 58                    | 3,070                 | 71,600                        | 74,700    | 44                    | 5,400                 | 60,300                        | 65,700    |
| Connecticut    | --                    | 1,580                 | 17,700                        | 19,200    | --                    | 340                   | 4,040                         | 4,380     |
| Delaware       | --                    | --                    | 81                            | 81        | --                    | --                    | 76                            | 76        |
| Florida        | --                    | 235                   | 16,800                        | 17,000    | --                    | 202                   | 15,700                        | 15,900    |
| Georgia        | --                    | 806                   | 57,000                        | 57,900    | --                    | 821                   | 46,400                        | 47,200    |
| Hawaii         | --                    | 11                    | 1,320                         | 1,330     | --                    | (2/)                  | 1,040                         | 1,040     |
| Idaho          | 11                    | 535                   | 12,800                        | 13,400    | 3                     | 253                   | 11,100                        | 11,400    |
| Illinois       | --                    | 1,650                 | 42,300                        | 44,000    | (2/)                  | 627                   | 39,400                        | 40,100    |
| Indiana        | 9                     | 546                   | 37,900                        | 38,400    | --                    | 1,030                 | 204,000                       | 205,000   |
| Iowa           | --                    | 923                   | 16,700                        | 17,700    | --                    | 563                   | 9,910                         | 10,500    |
| Kansas         | --                    | 440                   | 18,900                        | 19,300    | --                    | 436                   | 5,370                         | 5,800     |
| Kentucky       | 806                   | 2,720                 | 499,000                       | 502,000   | 991                   | 2,350                 | 314,000                       | 317,000   |
| Louisiana      | --                    | 131                   | 2,000                         | 2,130     | --                    | 191                   | 1,750                         | 1,940     |
| Maine          | --                    | 20                    | 270                           | 290       | --                    | 18                    | 49                            | 67        |
| Maryland 3/    | 2                     | 103                   | 5,430                         | 5,540     | 1                     | 214                   | 5,910                         | 6,130     |
| Massachusetts  | --                    | 418                   | 3,450                         | 3,870     | --                    | 546                   | 4,410                         | 4,950     |
| Michigan       | --                    | 265                   | 10,100                        | 10,300    | --                    | 79                    | 18,700                        | 18,700    |
| Minnesota      | (2/)                  | 204                   | 63,700                        | 63,900    | 5                     | 156                   | 53,800                        | 54,000    |
| Mississippi    | --                    | 22                    | 1,400                         | 1,420     | --                    | 377                   | 38                            | 415       |
| Missouri       | 2                     | 1,280                 | 116,000                       | 117,000   | 4                     | 2,930                 | 124,000                       | 127,000   |
| Montana        | 19                    | 145                   | 21,100                        | 21,200    | 14                    | 274                   | 17,100                        | 17,400    |
| Nebraska       | --                    | 121                   | 1,860                         | 1,980     | --                    | 73                    | 398                           | 471       |
| Nevada         | 4                     | 1,710                 | 75,300                        | 77,000    | --                    | 1,180                 | 105,000                       | 106,000   |
| New Hampshire  | --                    | 439                   | 5,720                         | 6,160     | --                    | 889                   | 8,250                         | 9,140     |
| New Jersey     | --                    | 150                   | 5,890                         | 6,040     | --                    | 211                   | 28,900                        | 29,100    |
| New Mexico     | 2                     | 233                   | 36,200                        | 36,400    | 5                     | 258                   | 25,100                        | 25,300    |
| New York       | 1                     | 825                   | 13,500                        | 14,400    | (2/)                  | 684                   | 16,000                        | 16,700    |
| North Carolina | --                    | 1,560                 | 52,500                        | 54,100    | --                    | 897                   | 23,300                        | 24,200    |
| North Dakota   | --                    | 9                     | 601                           | 610       | --                    | 26                    | --                            | 26        |
| Ohio           | 6                     | 539                   | 74,100                        | 74,600    | 4                     | 483                   | 51,600                        | 52,100    |
| Oklahoma       | 1                     | 249                   | 17,900                        | 18,100    | 2                     | 316                   | 9,960                         | 10,300    |
| Oregon         | --                    | 142                   | 4,980                         | 5,120     | --                    | 121                   | 1,180                         | 1,300     |
| Pennsylvania   | 88                    | 1,980                 | 139,000                       | 141,000   | 64                    | 1,860                 | 134,000                       | 136,000   |
| Rhode Island   | --                    | 20                    | 568                           | 589       | 13                    | 59                    | 812                           | 885       |
| South Carolina | --                    | 174                   | 11,200                        | 11,300    | --                    | 210                   | 7,510                         | 7,720     |
| South Dakota   | --                    | 12                    | 1,010                         | 1,020     | --                    | 3                     | 2,640                         | 2,650     |
| Tennessee      | 3                     | 1,460                 | 48,600                        | 50,100    | 17                    | 1,590                 | 31,000                        | 32,600    |
| Texas          | 3                     | 716                   | 39,000                        | 39,700    | 2                     | 806                   | 47,600                        | 48,400    |
| Utah           | 87                    | 385                   | 50,900                        | 51,300    | 35                    | 290                   | 56,200                        | 56,500    |
| Vermont        | 8                     | 35                    | 238                           | 281       | 10                    | 147                   | 469                           | 626       |
| Virginia       | 206                   | 2,690                 | 231,000                       | 234,000   | 257                   | 2,400                 | 148,000                       | 150,000   |
| Washington     | --                    | 1,110                 | 14,600                        | 15,700    | --                    | 1,010                 | 15,200                        | 16,200    |
| West Virginia  | 117                   | 1,240                 | 220,000                       | 221,000   | 63                    | 1,050                 | 261,000                       | 262,000   |
| Wisconsin      | --                    | 503                   | 15,400                        | 15,900    | --                    | 516                   | 13,900                        | 14,500    |
| Wyoming        | 44                    | 635                   | 223,000                       | 224,000   | 39                    | 703                   | 164,000                       | 165,000   |
| Total          | 1,530                 | 33,900                | 2,530,000                     | 2,570,000 | 1,640                 | 34,300                | 2,340,000                     | 2,380,000 |

-- Zero.

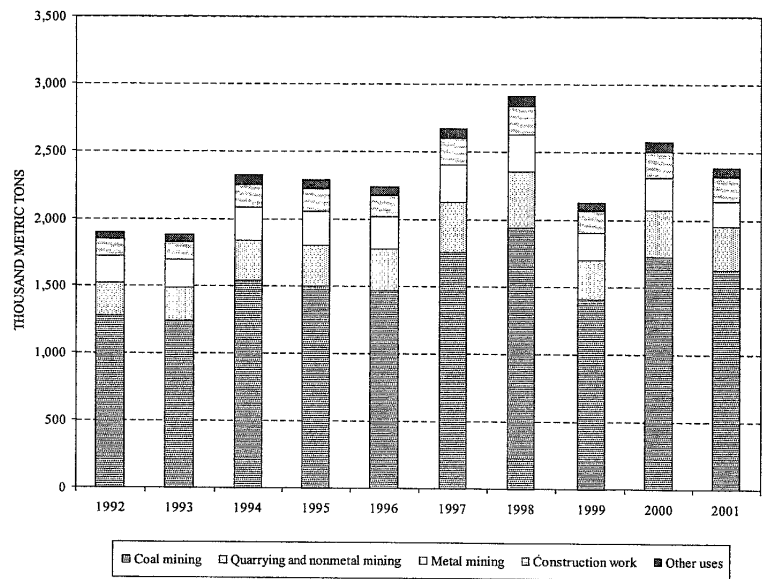
1/ Data are rounded to no more than three significant digits; may not add to totals shown.

2/ Less than 1/2 unit.

3/ Includes the District of Columbia.

Source: Institute of Makers of Explosives.

FIGURE 1  
SALES FOR CONSUMPTION OF U.S. INDUSTRIAL EXPLOSIVES





# Exhibit 2



KOCH PIPELINE COMPANY LP

AMMONIA DIVISION

October 25, 2000

Ms. Jeris Johnson  
Corporate Sourcing Director  
Dyno Nobel, Inc.  
11<sup>th</sup> Floor, Crossroads Tower  
Salt Lake City, UT 84144-0103

*Re: Rate Reduction to Louisiana, Missouri*

Dear Ms. Johnson:

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.

At Dyno Nobel's request, KPL has agreed to reduce its rates 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. Dyno Nobel made this request to bring these rates into parity with other rates on the pipeline recently reduced pursuant to a decision from the Surface Transportation Board issued on May 3, 2000, in matter STB Docket No. 41685.

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 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. This obligation of Dyno Nobel to pay the additional charges will cover all shipments to Louisiana, Missouri, made at this reduced rate to the effective date of any higher rates for other shippers as described above. Notwithstanding the foregoing, Dyno Nobel's obligation to repay the additional charges is conditioned upon KPL's other interstate shippers being similarly obligated.

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

Exhibit 2  
Page 2 of 2Ms. Jeris Johnson  
October 25, 2000  
Page 2

affirmed, the two (2) year limitation for the filing of a complaint under 49 U.S.C. 15905(c) for a violation of rate reasonableness under 49 U.S.C. 15501(a) and/or discrimination as to rates only under 49 U.S.C. 15505 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. Except as otherwise set forth herein, this letter shall not limit Dyno Nobel's right to file such complaint or KPL's defense thereto.

If you agree with the above, please sign this letter at the place indicated below and return it to the undersigned.

If you have any questions regarding the above, please feel free to contact the undersigned.

Accepted:

Koch Pipeline Company, L.P.  
Ammonia Division

Dyno Nobel Inc.

By: A. L. Botterweck *AK*  
Title: PRESIDENT  
Date: 10-25-00By: Dwight A. Belf  
Title: Corporate Attorney  
Date: 10-26-00



# Exhibit 3

**RATES**

**KOCH PIPELINE COMPANY, L.P.**

RATES RELATING TO

ANHYDROUS AMMONIA

SHIPMENTS

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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.

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

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ISSUED: September 29, 2000

EFFECTIVE: October 1, 2000

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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] <u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u> |                  |                       |
|---------------------------------------------------------------|------------------|-----------------------|
| 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] <u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u> |                  |                       |
|---------------------------------------------------------------|------------------|-----------------------|
| 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] <u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u> |                  |                       |
|---------------------------------------------------------------|------------------|-----------------------|
| 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] <u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u> |                  |                       |
|---------------------------------------------------------------|------------------|-----------------------|
| 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] <u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u> |                  |                       |
|---------------------------------------------------------------|------------------|-----------------------|
| 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   |               |
|----------------------------------------------|-------------------------|--------|---------------|
| <b><u>Taft, Louisiana</u></b> <sup>(3)</sup> | <b><u>Arkansas:</u></b> |        |               |
|                                              | El Dorado               | \$     | 6.63          |
|                                              | <b><u>Missouri:</u></b> |        |               |
|                                              | Hermann                 | \$     | 16.16         |
|                                              | Louisiana               |        | 16.16 (1) (2) |
|                                              | Palmyra                 | [U]    | 20.00         |
|                                              | <b><u>Illinois:</u></b> |        |               |
|                                              | Wood River              | \$     | 18.30         |
|                                              | Cowden                  |        | 21.03         |
|                                              | Trilla                  |        | 21.47         |
|                                              | <b><u>Iowa:</u></b>     |        |               |
|                                              | 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         |
|                                              | <b><u>Indiana:</u></b>  |        |               |
|                                              | Terre Haute             | \$     | 22.03         |
|                                              | Crawfordsville          |        | 22.73         |
|                                              | Frankfort               |        | 23.10         |
|                                              | Walton                  |        | 23.46         |
|                                              | Huntington              |        | 24.22         |
|                                              | <b><u>Nebraska:</u></b> |        |               |
|                                              | Blair                   | [U] \$ | 27.75         |
|                                              | Fremont                 |        | 25.28         |
|                                              | David City              |        | 25.41         |
|                                              | Aurora                  |        | 25.66         |

| <b><u>ALL RATES ARE UNCHANGED UNLESS OTHERWISE INDICATED</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------|
| <b>RATE IN DOLLARS PER TON</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                         |                  |
| <b>FROM</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>TO</b>               | <b>RATE</b>      |
| <b><u>Farmland-Garner, Iowa</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b><u>Missouri:</u></b> |                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Louisiana               | \$ 15.56 (1) (2) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b><u>Iowa:</u></b>     |                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Washington              | 11.00            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b><u>Nebraska:</u></b> |                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Aurora                  | 12.50            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | David City              | 12.50            |
| <p>(1) See Note 142<br/> (2) See Note 190<br/> [N] (3) See Note 195</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |                  |
| <p><b><u>Note 142</u></b></p> <p>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.</p> <p>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.</p> |                         |                  |

**[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

**Barton Exhibit 4**

# Exhibit 4

Redacted

**Counsels' Exhibit 1**

# Counsels' Exhibit 1

Redacted

**Counsels' Exhibit 2**

# Counsels' Exhibit 2

Redacted

**Counsels' Exhibit 3**

# Counsels' Exhibit 3

Redacted



# Counsels' Exhibit 4

L.P.S.C. No. 2  
Cancels  
LA. P.S.C. No. 1, etal

Counsels' Exhibit 4  
Page 1 of 12

S.T.B. No. 1  
Cancels  
S.T.B. Prior Filings

## KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

### LOCAL TARIFFS Applying on ANHYDROUS AMMONIA As Defined in Item No. 1 TRANSPORTED BY PIPELINE FROM AND TO POINTS NAMED HEREIN

The rates named in this Tariff are expressed in dollars per ton and are subject to change as provided by law, also to regulations named herein.

Rates, Rules and Regulations applying on Louisiana Intrastate Traffic issued on Authority No. 24.274-M of the Louisiana Public Service Commission (L.P.S.C.).

Rates, Rules and Regulations applying on Interstate Traffic issued on authority of the Surface Transportation Board (S.T.B.).

Issued to reflect application of a general 7% tariff increase for all rates. This Tariff will also combine the Louisiana intrastate tariff and the S.T.B interstate "REGULATIONS" and "RATE" filings into one document to insure the "REGULATIONS" are identical and for convenience and ease of use by shippers on the pipeline system. This tariff filing will also eliminate the "industrial user" classification of shippers and move their respective tariffs rates into a "miles moved" basis similar to the other tariffs contained in the tariff (may cause either an increased or decreased rate prior to the application of a general 7% tariff increase). Finally, this tariff filing will redefine the capacity allocation procedure into pipeline segments defined by pipe size. This will facilitate a more equitable capacity allocation for all shippers on the system as the system is used today.

The rates published herein will have no effect on the quality of the human environment.

Issued March 10, 2003

S.T.B. Effective Date:

Effective April 1, 2003

Issued March 10, 2003

LA P.S.C. Effective Date:

April 1, 2003

Issued By  
JIMMY L. HARRISON, President

Compiled By  
JOSEPH A. GRAHAM, Controller

Kaneb Pipe Line Company  
The Sole General Partner of Kaneb Pipe Line Operating Partnership, L.P.  
7340 West 21<sup>st</sup> Street North, Ste 200  
Wichita, KS 67205  
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| TABLE OF CONTENTS                                              | PAGE              |
|----------------------------------------------------------------|-------------------|
| Abbreviations and Reference Marks .....                        | 2                 |
| Alphabetical List of Points From and To Which Rates Apply..... | 3                 |
| Section 1 -- Rules and Regulations .....                       | 4, 5, 6, 7, 8 & 9 |
| Section 2 -- Local Rates .....                                 | 10 & 11           |
| Map .....                                                      | 12                |

| ABBREVIATIONS AND REFERENCE MARKS |                                                                     |
|-----------------------------------|---------------------------------------------------------------------|
| S.T.B.                            | Surface Transportation Board                                        |
| L.P.S.C.                          | Louisiana Public Service Commission                                 |
| No.                               | Number                                                              |
| [N]                               | New                                                                 |
| [S]                               | Intrastate rate only                                                |
| [C]                               | Cancelled                                                           |
| [D]                               | Decreased rate                                                      |
| [I]                               | Increased rate                                                      |
| [M]                               | Minimum tariff rate                                                 |
| [A]                               | Adjusted to a mileage moved basis                                   |
| [W]                               | Change in wording only from both previous STB and Louisiana tariffs |
| [W-S]                             | Change in wording only from previous Louisiana tariff               |
| [W-STB]                           | Change in wording only from previous STB tariff                     |

| TARIFF FILING EXPLANATORY NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Issued to reflect application of a general 7% tariff increase for all rates. This Tariff will also combine the Louisiana intrastate tariff and the S.T.B interstate "REGULATIONS" and "RATE" filings into one document to insure the "REGULATIONS" are identical and for convenience and ease of use by shippers on the pipeline system. This tariff filing will also eliminate the "industrial user" classification of shippers and move their respective tariffs rates into a "miles moved" basis similar to the other tariffs contained in the tariff (may cause either an increased or decreased rate prior to the application of a general 7% tariff increase). Finally, this tariff filing will redefine the capacity allocation procedure into pipeline segments defined by pipe size. This will facilitate a more equitable capacity allocation for all shippers on the system as the system is used today.</p> |

| [N] ALPHABETICAL LIST OF POINTS FROM AND TO WHICH RATES<br>IN SECTION 2 APPLY |                |                                |                |
|-------------------------------------------------------------------------------|----------------|--------------------------------|----------------|
| Points from which<br>rates apply                                              | Item<br>Number | Points to which<br>rates apply | Item<br>Number |
| Donaldsonville, LA                                                            | 130            | Algona, IA                     | 130            |
| Fortier, LA                                                                   | 130            | Aurora, NE                     | 130            |
| Garner, IA                                                                    | 130            | Blair, NE                      | 130            |
| Luling, LA                                                                    | 130            | Cowden, IL                     | 130            |
| Pollock, LA                                                                   | 130            | Crawfordsville, IN             | 130            |
| Sterlington, LA                                                               | 130            | David City, NE                 | 130            |
| Taft, LA                                                                      | 130            | Donaldsonville, LA             | 130            |
|                                                                               |                | El Dorado, AR                  | 130            |
|                                                                               |                | Faustina, LA                   | 130            |
|                                                                               |                | Fort Madison, IA               | 130            |
|                                                                               |                | Frankfort, IN                  | 130            |
|                                                                               |                | Fremont, NE                    | 130            |
|                                                                               |                | Garner, IA                     | 130            |
|                                                                               |                | Hermann, MO                    | 130            |
|                                                                               |                | Holstein, IA                   | 130            |
|                                                                               |                | Huntington, IN                 | 130            |
|                                                                               |                | Iowa Falls, IA                 | 130            |
|                                                                               |                | Louisiana, MO                  | 130            |
|                                                                               |                | Marshalltown, IA               | 130            |
|                                                                               |                | Palmyra, MO                    | 130            |
|                                                                               |                | Spencer, IA                    | 130            |
|                                                                               |                | Taft, LA                       | 130            |
|                                                                               |                | Terre Haute, IN                | 130            |
|                                                                               |                | Trilla, IL                     | 130            |
|                                                                               |                | Walton, IN                     | 130            |
|                                                                               |                | Washington, IA                 | 130            |
|                                                                               |                | Wood River, IL                 | 130            |

**SECTION 1**  
**RULES AND REGULATIONS**

The Kaneb Pipe Line Operating Partnership, L.P. and the other pipeline companies participating in this tariff, hereinafter referred to as "carrier", will receive anhydrous ammonia for transportation under the following conditions:

**Item No. 1 Anhydrous Ammonia Defined**

The term "ammonia", as used herein, means liquid anhydrous ammonia that meets the specifications issued by the Carrier.

**Item No. 5 Ton Defined**

A "ton" of ammonia, as used herein, shall mean two thousand (2,000) pounds avoirdupois, and shall be equivalent to three hundred eighty-seven and twelve hundredths (387.12) U.S. gallons at sixty degrees Fahrenheit (60° F.) and equilibrium vapor pressure.

**Item No. 10 Carrier Defined**

Carrier shall mean Kaneb Pipe Line Operating Partnership, L.P.

**Item No. 15 Shipper Defined**

Shipper shall mean the party who contracts with Carrier for the transportation of ammonia under the terms of this tariff.

**[W-S] Item No. 20 Contract Year**

Removed in its entirety from the previous L.P.S.C. filing.

**[W-S] Item No. 21 Contract Period**

Removed in its entirety from the previous L.P.S.C. filing.

**Item No. 25 Ammonia Acceptance Specifications**

Ammonia shall be accepted for transportation, and ammonia shall be delivered by Carrier at destination, only when such ammonia meets all required specifications:

|                                     |                                            |
|-------------------------------------|--------------------------------------------|
| Temperature:                        | Not less than 35° F., nor more than 85° F. |
| Ammonia (NH <sub>3</sub> ) Content: | 99.5% minimum by weight                    |
| Water Content:                      | 0.2% minimum by weight                     |
| Oil Content by Weight:              | 5 parts per million maximum                |
| Inerts:                             | 0.5cc per gram maximum                     |

When requested, shipper shall furnish Carrier with a document setting forth the specifications of each daily shipment of ammonia delivered into Carrier's pipeline. Shipper shall indemnify and save Carrier harmless from any loss sustained by other shippers or by Carrier by reason of contamination or damage to other ammonia in Carrier's custody or by reason of damage to Carrier's pipeline or other facilities caused by failure of the materials accepted for transportation to be ammonia as prescribed in this item. Carrier may sample and test any such shipment prior to acceptance or during receipt, and in the event of variance between shipper's document and Carrier's test, the latter shall prevail.

**[W-S] Item No. 30 Pipeline Contracts**

Removed in its entirety from the previous L.P.S.C. filing.

**Item No. 35 Measurement**

Product shall be measured by Carrier on receipt and delivery. Observed volume at operating pressure and temperature shall be converted to weight by using the factors obtained in Carrier's Gauge Manual.

**[W-S] Item No. 37 Loss Allowance**

Carrier will deduct three-tenths of one percent (0.3%) from all injections each day as a loss allowance. Adjustment will be made to shipper on an annual basis within 45 days following December 31 of each year based on an over/short report prepared by Carrier. Losses will be adjusted to the actual amount but not to exceed 0.3% loss.

**Item No. 40 Acceptance Free From Liens and Charges**

The Carrier shall have the right to reject any ammonia when tendered for shipment which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind and it may require of the consignor proof of his perfect and unencumbered title or a satisfactory indemnity bond.

**[W] Item No. 45 Duty of Carrier**

Carrier shall, subject to Item No. 65 and Item No. 67, transport to destination the quantity of ammonia accepted for transportation.

**Item No. 50 Identity of Shipment**

Carrier will not maintain identity of ammonia but will deliver from its common stream.

**[W-S] Item No. 55 Day Defined**

A "day" as used herein shall mean the twenty-four (24) hours between 8:00 a.m. of the present day and 8:00 a.m. of the following day.

**[W-S] Item No. 60 Calendar Week Defined**

The "calendar week" as used herein shall mean the one hundred sixty-eight (168) hours between 8:00 a.m. Monday and 8:00 a.m. the following Monday.

**Item No. 65 Scheduling of Shipments**

Ammonia shall be accepted for transportation at such time and in such quantities as scheduled by Carrier. Such schedules may be modified from time to time in the manner and to the extent reasonably desirable to facilitate and to reasonably accommodate consignor's need for transportation.

**Item No. 67 Pipeline Allocation Procedure**

[W] Set forth below are the two types of pipeline allocation procedures for volumes when they apply:

[W] 1.(a) During periods when the pipeline is constrained by its own physical capacity, allocation is based on the shippers' prior calendar year shipping history. If a shipper, for example, has moved 50% of all tons through a pipeline segment during the prior year, that shipper has gained the right to 50% of all tons moved through such segment each day allocation remains necessary. In the event that all capacity is not required during a period of allocation, unused capacity will be distributed in a non-discriminatory manner based on the prior year shipping history to all other shippers requesting same.

SECTION 1 - Continued

Page 6

[W] (b) The pipeline is broken down into the following segments (defined by pipe size) for purposes of allocation: Louisiana Gulf Coast 6" laterals downstream of Donaldsonville Jct, LA; Donaldsonville Jct., LA to Marksville Jct.,; Marksville Jct. To Hermann, MO.; Hermann, MO. to Spencer, IA; Spencer, IA to Aurora, NE.; Hermann, MO. to Terre Haute, IN.; and Terre Haute, IN. to Huntington, IN. Retenders downstream from one segment to the next are included in figuring shipping history.

(c) Any injector who creates incremental capacity within any respective line segment has the right to utilize 100% of the created incremental capacity so long as it does not hinder Carrier's ability to move non-incremental volumes and satisfy its customers and/or operational needs.

[W] (d) Prior period "Industrial" accounts will be allotted their 2002 calendar year shipping history in the capacity allocation base in such a way as to maintain their 2002 volumes. Allocations after 2003 will be as described in Item No. 67; 1(a), 1(b) and 1(c).

[W-S] 2. During periods when the pipeline is not constrained by its own physical capacity, shipments on Carrier's pipeline are allocated based upon the capacity of terminals to receive anhydrous ammonia at the various destination points. For example, if a terminal destination receives 5% of the total shipments able to be received by terminals off the pipeline each day, that terminal will be given 5% of the pipeline shipments. All details as to the amount of each terminal's storage space that is to be received by each storage customer at the various terminals will be decided solely by the respective terminals and their respective storage customers. Carrier will not participate in making such determinations.

**Item No. 70 Facilities Required at Origin**

Product shall be accepted by Carrier only when shipper or its designee has provided facilities for delivery of product into Carrier's system at pressures and flow rates required by Carrier. There shall be a meter station at each point of origin which shall be equipped with facilities necessary to determine accurately the quantity of ammonia delivered to Carrier. Each meter station at each point of origin shall be provided and operated by the shipper or its designee, except that the Carrier shall have access to each such meter station at all reasonable times and shall be responsible for the maintenance and calibration of the meter. Meter stations shall be built to the specifications of the Carrier.

Pumps at points of origin shall be built to the specification of the Carrier and shall be maintained and operated according to instructions of the Carrier. All other facilities associated with connection with the Carrier's pipeline, including storage tanks, surge tanks, pumps, associated piping, and valves at origin shall be provided by the shipper or its designee and subject to the inspection and approval of the Carrier, which approval shall not be unreasonably withheld.

**[I] [W-S] Item No. 75 Facilities Required at Destination**

There shall be a meter station at each point of destination which shall be equipped with facilities necessary to determine accurately the quantity of ammonia delivered at destination. The Carrier will provide and operate meter stations at outlets at points of destination. For metering service at points of destination there is a charge of [I] twenty cents (\$0.20) per ton of ammonia. A shipper may, at its option, pay a nonrecurring charge of [I] twenty thousand dollars (\$20,000.00) for the use of a destination point, and in that event, no charge for metering service will be made to that shipper in respect of ammonia delivered at that point.

All other facilities associated with the Carrier's pipeline, including storage tanks, surge tanks, associated piping, and valves at destination shall be provided by the shipper or its designee and subject to the inspection and approval of the Carrier, which approval shall not be unreasonably withheld. Ammonia will be accepted for transportation only when the Carrier has ascertained from the shipper that the shipper or its designee has adequate facilities at destination which are available for receipt of shipment as it arrives without delay.

**[W-S] Item No. 80 Schedule**

Any shipper may tender a designated quantity of ammonia to be transported during a designated month between points on Carrier's system. Such tenders shall be delivered to the Carrier prior to the 25th day of the month preceding the designated month. Carrier shall notify shipper of its ability to transport the tender quantity during the designated month on or before the

SECTION 1 - Continued

Page 7

first day of that designated month. If there is insufficient capacity available to ship all quantities specified by such tenders, the Carrier will prorate the capacity available on an equitable basis among the shippers making such tenders.

Any quantity of ammonia transported pursuant to this Item, during a designated month or other period, shall be delivered to the Carrier for transportation in approximately equal daily quantities.

Any shipper wishing to utilize capacity other than as specified herein may make a tender designating the quantity of ammonia sought to be shipped, the points of origin and destination, the desired period of shipment and other requirements of the movement. The Carrier will accommodate any such shipper to the extent it is able to do so, having regard for the rights of other shippers and the economic utilization of the Carrier's facilities.

**Item No. 90 Retendering of Product**

The following procedure will be observed for product delivered to the final destination:

Upon written notice by the shipper as specified in Item 80, product may be retendered from locations (if equipped and agreed upon by shipper or its designee) named in various pipeline tariffs for a period not to exceed twelve (12) months after the initial receipt of that product at that destination.

On product reshipped from a destination to a revised final destination pursuant to this Item 90: (1) there is a retendering charge of fifty cents (\$0.50) per ton for each ton of ammonia retendered by a shipper to the Carrier pursuant to this item; (2) the rate to be collected for the reshipped product shall be the rate from origin to revised final destination, as in effect on the date of actual retendering, minus the rate paid for service from original point of shipment of that product to the initial destination, plus meter charge (if applicable) at revised final destination; (3) back-haul from original destination to revised final destination will be permitted without any additional charge (other than the \$0.50 covered in (1) of this paragraph).

Shipper may retender a quantity of ammonia at the destination point so long as there is sufficient transportation capacity, including pumping, metering, and other associated facilities, to accommodate such tendered ammonia at the time it is sought to be tendered. Product which has originally been shipped past the pipeline J-1 pump station located near Hermann, Missouri, or original origin, shall not be allowed a back-haul past that point.

Not more than one stop for retendered product shall be authorized.

**Item No. 95 Payment of Carrier Charges**

Carrier will invoice Shipper for transportation charges and Shipper shall pay all transportation and other lawful charges accruing on Product delivered to and accepted by Carrier for shipment. If required, Shipper shall pay the same before delivery at destination. All charges shall be paid by Shipper within ten (10) days of the date of invoice from Carrier. All payments by Shipper to Carrier shall be made by Automated Clearing House (ACH) debit initiated by Carrier on or before the due date of invoice. All charges that remain unpaid for more than thirty (30) days from the date of Carrier's invoice shall accrue an interest charge of the lesser of (i) eighteen (18%) percent per annum, or (ii) the maximum non-usurious interest rate which may then be charged under applicable law.

[W] If charges remain unpaid for 45 days past Carrier's invoice then the Carrier shall have the right, after five (5) days' written notice to Shipper, to refuse receipts of any product into Carrier's pipeline for future delivery and Carrier reserves the right to off-set any such charges against any monies owed by Shippers product inventory in Carrier's custody.

**[W-S] Item No. 100 Transportation Credits**

Removed in it's entirety from the previous L.P.S.C. filing.

**[W-S] Item No. 102 Special Service Contract**

Removed in it's entirety from the previous L.P.S.C. filing.

**[W] Item No. 105 Liability of Carrier**

The Carrier's custody of ammonia begins when ammonia passes the block valve downstream from the shipper's pump station at a point of origin and ends when ammonia passes the block valve downstream from the Carrier's meter station at a point of destination.

The Carrier will not be liable to a shipper for any loss, vandalism, delay, discoloration, contamination, or deterioration that is caused by a breach of the warranty described in Item 25, negligence or other fault on the part of such shipper, or by act of God or public enemy, quarantine, authority of law, governmental requirement or restriction, strike, lockout, labor difficulty, injunction, riot, fire, explosion, flood, accident, breakage of machinery or apparatus, inability to obtain fuel, power, raw materials or storage, or any other cause beyond the Carrier's control, whether or not similar to the foregoing causes, and any such loss, delay, or damage shall be equitably apportioned among shippers.

**Item No. 110 Failure to Take Delivery**

In the event that a shipper or its designee fails to take delivery as required, the Carrier shall have the right, upon notice to the shipper to refuse to accept tenders at points of origin and to divert, re consign, or make whatever arrangements for disposition of the undelivered ammonia as the Carrier deems appropriate to clear the pipeline, including the right to sell such product at private sales for the best price obtainable. The Carrier may be a purchaser at any such sale. Out of the proceeds of any such sale, the Carrier may pay itself all transportation and other lawful charges and expenses of sale. The balance shall be held for whomsoever may be lawfully entitled thereto. If the proceeds from the sale are not sufficient to pay all transportation and other lawful charges and expenses of sale, the shipper shall remain liable to the Carrier for the balance. The Carrier's refusal to accept tenders at points of origin as a result of failure of shipper or its designee to take delivery shall not in any way relieve shipper of any commitment for the purchase of transportation and other services.

**[W] Item No. 115 Claim, Time For Filing**

Claim for any delay, damage to, or loss of ammonia must be made in writing to the Carrier within six (6) months after delivery from the Carrier's facilities of the shipment involved at the destination to which such shipment was consigned, or in case of failure by Carrier to deliver, then within six (6) months after the date upon which delivery would have reasonably been completed by the Carrier. Such written claim as aforesaid shall be condition precedent to any suit.

**[W-STB] Item No. 120 Explanation of Abbreviations and References Marks**

Moved to page 2 in this filing.

**[C] Item No. 120 Rate Section 1 - Industrial Service Rates**

Cancelled in it's entirety from the previous L.P.S.C. filing.

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**SECTION 2**

**[I] ALL RATES ON THIS PAGE ARE INCREASES UNLESS OTHERWISE NOTED**  
**ALL RATES ON THIS PAGE ARE INTERSTATE UNLESS OTHERWISE NOTED**

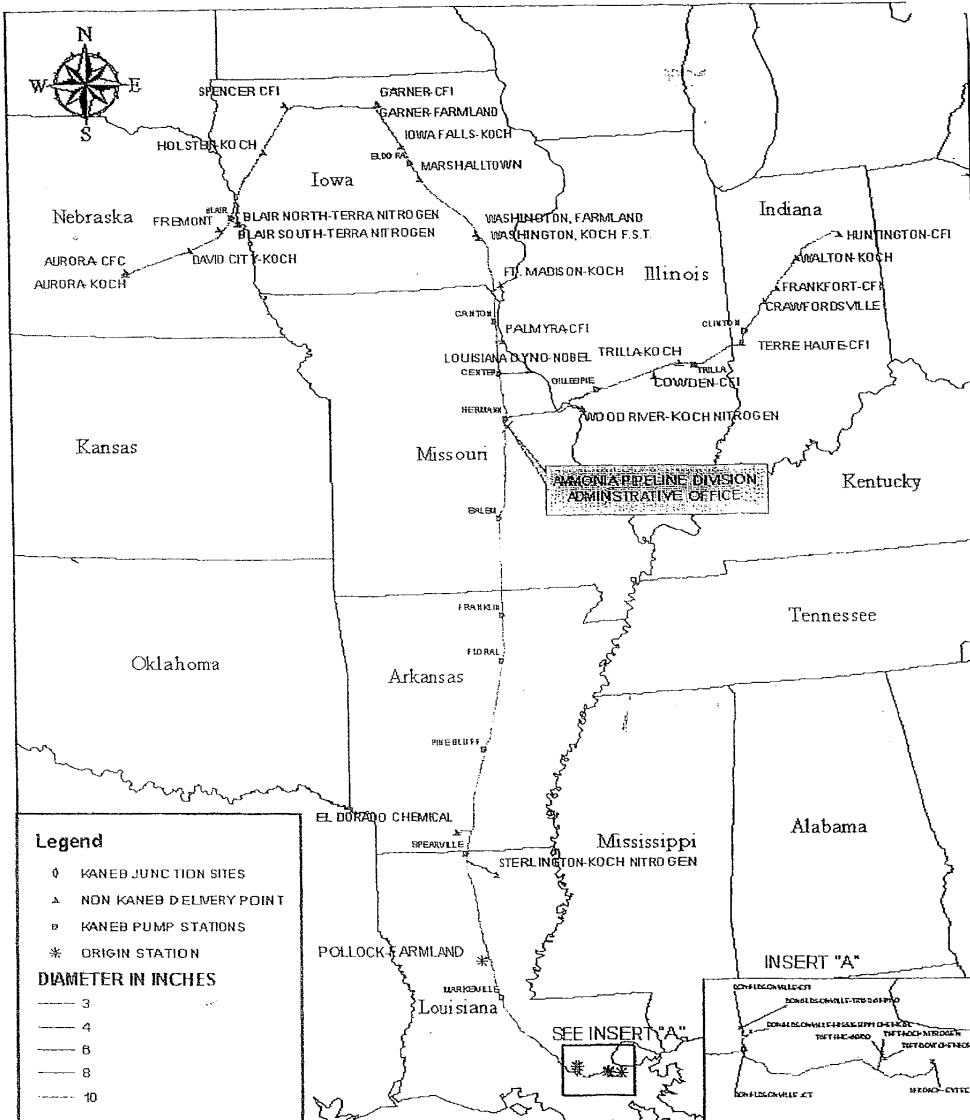
**LOCAL RATES**  
**for the**  
**TRANSPORTATION OF ANHYDROUS AMMONIA**  
**(as defined in Item No. 1)**  
**BY PIPELINE**  
**All Rates in Dollars per Ton**  
The rates contained in this section apply only via the lines of the  
Kaneb Pipe Line Operating Partnership, L.P.

| [W] Item No. 130. |                    |             |       |            |       |                 |       |             |       |                 |       |
|-------------------|--------------------|-------------|-------|------------|-------|-----------------|-------|-------------|-------|-----------------|-------|
| FROM              |                    |             |       |            |       | Donaldsonville, |       |             |       |                 |       |
| TO                |                    | Fortier, LA |       | Luling, LA |       | LA              |       | Pollock, LA |       | Sterlington, LA |       |
| [A]               | El Dorado, AR      | 8.04        |       | 7.86       |       | 7.30            |       | [D] [M]     | 5.00  | [D] [M]         | 5.00  |
|                   | Hermann, MO        | 17.52       |       | 17.32      |       | 17.18           |       |             | 16.93 |                 | 16.65 |
| [A]               | Louisiana, MO      | 21.04       |       | 21.02      |       | 21.01           |       |             | 20.02 |                 | 19.99 |
|                   | Palmyra, MO        | 21.40       |       | 21.40      |       | 21.40           |       |             | 20.33 |                 | 20.33 |
|                   | Wood River, IL     | 19.84       |       | 19.61      |       | 19.46           |       |             | 19.16 |                 | 18.85 |
|                   | Cowden, IL         | 22.80       |       | 22.53      |       | 22.42           |       |             | 22.00 |                 | 21.80 |
|                   | Trilla, IL         | 23.28       |       | 23.00      |       | 22.80           |       |             | 22.48 |                 | 22.33 |
|                   | Fort Madison, IA   | 24.40       |       | 24.34      |       | 24.08           |       |             | 23.81 |                 | 23.54 |
|                   | Washington, IA     | 25.08       |       | 24.94      |       | 24.61           |       |             | 24.35 |                 | 24.15 |
|                   | Marshalltown, IA   | 25.49       |       | 25.27      |       | 25.08           |       |             | 24.75 |                 | 24.55 |
|                   | Iowa Falls, IA     | 25.68       |       | 25.49      |       | 25.27           |       |             | 25.01 |                 | 24.75 |
|                   | Garner, IA         | 28.62       |       | 28.36      |       | 28.36           |       |             | 27.82 |                 | 27.55 |
|                   | Algona, IA         | 26.15       |       | 26.02      |       | 25.82           |       |             | 25.41 |                 | 25.13 |
|                   | Spencer, IA        | 26.48       |       | 26.20      |       | 26.09           |       |             | 25.68 |                 | 25.49 |
|                   | Holstein, IA       | 26.75       |       | 26.48      |       | 26.20           |       |             | 26.02 |                 | 25.68 |
|                   | Terre Haute, IN    | 23.81       |       | 23.60      |       | 23.48           |       |             | 23.13 |                 | 22.68 |
|                   | Crawfordsville, IN | 24.55       |       | 24.35      |       | 24.15           |       |             | 23.81 |                 | 23.55 |
|                   | Frankfort, IN      | 25.01       |       | 24.75      |       | 24.55           |       |             | 24.20 |                 | 24.08 |
|                   | Walton, IN         | 25.41       |       | 25.13      |       | 25.01           |       |             | 24.61 |                 | 24.47 |
|                   | Huntington, IN     | 26.09       |       | 25.95      |       | 25.68           |       |             | 25.27 |                 | 25.08 |
| [A]               | Blair, NE          | [D]         | 27.17 | [D]        | 27.02 | [D]             | 26.87 | [D]         | 26.43 | [D]             | 26.14 |
|                   | Fremont, NE        |             | 27.22 |            | 27.08 |                 | 26.95 |             | 26.48 |                 | 26.20 |
|                   | David City, NE     |             | 27.35 |            | 27.22 |                 | 27.08 |             | 26.75 |                 | 26.48 |
|                   | Aurora, NE         |             | 27.77 |            | 27.49 |                 | 27.30 |             | 27.08 |                 | 26.95 |
|                   | Faustina, LA       | [S]         | 10.70 | [S]        | 10.70 | [S]             | 10.70 | [S]         | 10.70 | [S]             | 10.70 |
|                   | Donaldsonville, LA | [S]         | 10.70 | [S]        | 10.70 | [S]             | 10.70 | [S]         | 10.70 | [S]             | 10.70 |
|                   | Taft, LA           | [S]         | 10.70 | [S]        | 10.70 | [S]             | 10.70 | [S]         | 10.70 | [S]             | 10.70 |

## SECTION 2 (Cont)

| [W] Item No. 110 (cont). |     |          |            |  |  |
|--------------------------|-----|----------|------------|--|--|
| FROM                     |     |          |            |  |  |
| TO                       |     | Taft, LA | Garner, IA |  |  |
| [A] El Dorado, AR        |     | 7.77     | ----       |  |  |
| Hermann, MO              |     | 17.29    | ----       |  |  |
| Louisiana, MO            | [A] | 21.02    | 24.11      |  |  |
| Palmyra, MO              |     | 21.40    | ----       |  |  |
| Wood River, IL           |     | 19.58    | ----       |  |  |
| Cowden, IL               |     | 22.50    | ----       |  |  |
| Trilla, IL               |     | 22.97    | ----       |  |  |
| Fort Madison, IA         |     | 24.34    | ----       |  |  |
| Washington, IA           |     | 24.91    | 11.77      |  |  |
| Marshalltown, IA         |     | 25.24    | ----       |  |  |
| Iowa Falls, IA           |     | 25.46    | ----       |  |  |
| Garner, IA               |     | 28.36    | ----       |  |  |
| Algona, IA               |     | 25.99    | ----       |  |  |
| Spencer, IA              |     | 26.17    | ----       |  |  |
| Holstein, IA             |     | 26.45    | ----       |  |  |
| Terre Haute, IN          |     | 23.57    | ----       |  |  |
| Crawfordsville, IN       |     | 24.32    | ----       |  |  |
| Frankfort, IN            |     | 24.72    | ----       |  |  |
| Walton, IN               |     | 25.10    | ----       |  |  |
| Huntington, IN           |     | 25.92    | ----       |  |  |
| [A] Blair, NE            | [D] | 26.99    | ----       |  |  |
| Fremont, NE              |     | 27.05    | 10.70      |  |  |
| David City, NE           |     | 27.19    | 13.38      |  |  |
| Aurora, NE               |     | 27.46    | [A] 16.51  |  |  |
| Faustina, LA             | [S] | 10.70    |            |  |  |
| Donaldsville, LA         | [S] | 10.70    |            |  |  |
| Taft, LA                 | [S] | 10.70    |            |  |  |

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**SYSTEM MAP -AMMONIA PIPELINE DIVISION**