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September 26, 2003

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings
SEP 26 2003
Part of
Public Record



Re: STB Docket No. NOR 42084
CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Reply of Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. to CF Industries, Inc.'s Response to Kaneb's Motion to Dismiss. A diskette containing the text of the Reply in Microsoft Word is also enclosed.

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

Sincerely,

Kathrine L. Henry
Kathrine L. Henry

Enclosures

209001

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD



CF INDUSTRIES, INC.,
Complainant

v.

KANEB PIPE LINE PARTNERS, L.P.,

and

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

Docket No. NOR 42084

ENTERED
Office of Proceedings

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REPLY OF KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P. TO
CF INDUSTRIES, INC.'S RESPONSE TO KANEB'S MOTION TO DISMISS

Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.
(collectively, "Kaneb" or "Defendant"), by and through their counsel, submit this Reply
("Reply") to CF Industries, Inc.'s ("CF Industries") Response to Kaneb's Motion to
Dismiss ("Response").¹

Kaneb will not repeat all of its prior arguments presented in its Motion to
Dismiss. Such arguments are incorporated herein by reference, including those that CF
Industries failed to address in its Response. For example, CF Industries did not refute
Kaneb's assertion that it strictly adhered to the Board's regulatory requirements regarding

¹ The Board should consider CF Industries' Response as a counter-motion for summary judgment, given that the Response is clearly intended as such: "[T]he Board should grant summary judgment in favor of CF Industries" and "summarily rule that Kaneb's unilateral change to prescribed rates violates the existing rate prescription of CF Industries, Inc." See Response at 1, 8. Accordingly, Kaneb is entitled to answer the Response as a reply to a motion for summary judgment. In the alternative, Kaneb seeks a waiver to file this Reply to CF Industries' Response to the extent necessary under the Board's rules. The Reply will clarify the record and respond to certain incorrect allegations contained in CF Industries' Response.

tariff filings and notice of rate changes for pipeline carriers as contained in 49 C.F.R. Part 1305 (2002), and, in fact, Kaneb went beyond the regulatory requirements, transmitting its proposed tariff changes with a detailed explanation to the Board, which returned the changes as unrecorded to Kaneb.

Kaneb respectfully requests that the Board consider the following arguments in denying the requested relief CF Industries seeks in its Response:

A. Kaneb's Interpretation of the Case Law Pertaining to Prescribed Rates is Correct.

In Section A of its Response, CF Industries largely repeats the arguments that it initially made in its Complaint. Since Kaneb has previously addressed those arguments in its Motion to Dismiss, Kaneb will not repeat those points in this Answer.

The only new issue CF Industries raises in its Response sets out an unwarranted interpretation of the Board's case law with respect to prescribed rates. Specifically, in its complaint, CF Industries cited to a footnote in the Wheat decision,² which, in turn, cited to the Atchison case,³ to support its argument that a carrier must first petition the Board for permission to modify a prescribed rate. However, this premise is never established in the Atchison decision, as CF Industries concedes.⁴ Once CF Industries realized this error, it decided to rewrite ICC precedent to suit its own purpose by claiming that the ICC mistakenly cited to the Atchison decision in the Wheat footnote instead of citing to the supposedly "correct" Arizona Grocery case.⁵

The footnote states in pertinent part:

A rate is prescribed under a section 10704 order. This order remains

² Wheat, Okla. And Kan. To Tex. Gulf Ports, 359 I.C.C. 592 at 599, n.9 (1979) ("Wheat").

³ Atchison, T. & S.F. Ry. Co. v. United States, 284 U.S. 248 (1932) ("Atchison")

⁴ Response at 4.

⁵ Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co., et al., 284 U.S. 370 (1932) ("Arizona Grocery").

in effect unless modified. To modify a prescribed rate a carrier must first petition for permission to change the rate level. This petition is subject to opposition, reopening of the administrative proceeding and possible court appeal. See Atchison, T. & S.F. Ry. Co. v. United States, 284 U.S. 248 (1932).

The concepts of fair hearings, reopening the administrative proceeding and court appeal were discussed in Atchison, albeit in the context of an entirely different fact situation that involved an improperly denied petition for rehearing of a general, industry-wide investigation ICC order. It did not involve a petition by a carrier to change the rate level to modify a prescribed rate. By contrast, there is no discussion of these procedural concepts in Arizona Grocery. Thus, it is clear that the ICC intended in the Wheat decision to cite the Atchison case. CF Industries' assertion to the contrary is completely erroneous and presumptuous.

More important than the correction of CF Industries' interpretation of Wheat, Atchison and Arizona Grocery, though, is that the cases cited by CF Industries are distinguishable from the circumstances leading to Kaneb's rate increases, as discussed in Kaneb's Motion to Dismiss.

CF Industries attempts to further bolster its argument by charging that Kaneb believes that a pipeline should be able to change its prescribed rates "at will, and a shipper should merely file a procession of complaints to protect itself."⁶ CF Industries mischaracterizes Kaneb's position. In the portion of the Motion to Dismiss mischaracterized by CF Industries, Kaneb recited the statutory and regulatory history of the rate requirements for pipeline carriers to demonstrate consistency with its position that it fully complied with the Board's streamlined regulatory requirements and to explain the statutory and regulatory protections that are in place for affected shippers.

⁶ Response at 5.

Kaneb stands by its interpretation of the case law cited in the Motion to Dismiss, and believes that the cases cited by CF Industries concerning prescribed rates are distinguishable from the factual circumstances in this proceeding.

B. Instituting a Separate Rate Proceeding to Permit Kaneb to Increase the Prescribed Rates Would Be Inefficient and Duplicative.

CF Industries states that Kaneb must file a “comprehensive” rate case in a separate proceeding if Kaneb wishes to increase its rates. However, as Kaneb noted in the Motion to Dismiss, a full evidentiary hearing is not required to vacate a prior rate prescription as long as the parties have an adequate opportunity to be heard.⁷ The filings submitted in this proceeding are thorough in presenting the parties’ respective positions, and thus can be used by the Board as the basis to lift the rate prescription ordered in the Koch decision.⁸ To require Kaneb to institute an entirely new rate proceeding would be a complete waste of the parties’ and Board’s resources and time.

Moreover, the filing of a rate case would be duplicative. In Docket No. 42081, which is currently before the Board, Dyno Nobel Inc. (“DNI”) has challenged as unreasonable Kaneb’s increase of DNI’s rates, which necessarily involves the examination of Kaneb’s across-the-board, system-wide rate increases. CF Industries has conceded that its rates are affected by Kaneb’s system-wide increase in its motion to intervene in the DNI proceeding.⁹ The factual underpinnings as to whether Kaneb’s increased rates are justified will be fully disclosed through discovery and evidentiary submissions in the DNI proceeding. Therefore, a wholly new and separate proceeding

⁷ San Antonio, Tex. v. Burlington N., et al., 364 I.C.C. 887, 893 (1981) (“San Antonio”).

⁸ CF Indus., Inc. v. Koch Pipeline Co., L.P., STB Docket No. 41685 (May 9, 2000). (“Koch”)

⁹ See Petition to Intervene of CF Industries, Inc., STB Docket No. 42081, at p. 2 (August 1, 2003). Kaneb has opposed CF Industries’ motion to intervene, in part on the basis that CF Industries has not challenged the reasonableness of Kaneb’s rate increase.

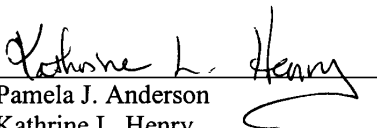
that will essentially present the same information that is already in front of the Board in Docket No. 42081 should not be convened, since such a proceeding would be repetitive and inefficient. Therefore, assuming, arguendo, that Kaneb was required to seek affirmatively the Board's approval of its rate increase, the Board should vacate the rate prescription ordered in the Koch decision, allow Kaneb's rate increase to go into effect and allow the DNI case to proceed on the issue of rate reasonableness.

CONCLUSION

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

1. Deny the relief requested by CF Industries in its Response by granting Kaneb's Motion to Dismiss the Complaint of CF Industries or, in the alternative, for Summary Judgment, with prejudice, which was previously submitted in this proceeding;
2. Award Kaneb its costs and fees incurred in defense of this action; and
3. Grant Kaneb such additional relief as it deems proper.

Respectfully submitted,


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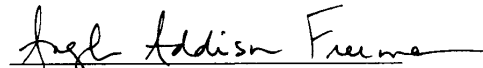
Attorneys for Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dated: September 26, 2003

CERTIFICATE OF SERVICE

Pursuant to Rule 1104.12 of the Surface Transportation Board's Rule on Service of Pleadings and Papers, I hereby certify that I have this day served a copy of the foregoing document by first-class U.S. mail, postage prepaid, on all parties of record in this proceeding, Docket No. NOR 42084.

Dated at Washington, D.C., this 26th day of September 2003.


Angela Addison Freeman

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