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September 17, 2004

BY HAND DELIVERY

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



Re: Docket No. 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 are an original and ten (10) copies of the Petition of Dyno Nobel, Inc. ("DNI") for Leave to Intervene. Because the deadline for Reply evidence in this matter is September 30, 2004, DNI respectfully requests that the Board give this filing **EXPEDITED CONSIDERATION**.

In light of the September 30 due date for responses to Defendants' September 13 filing, DNI also requests that the Board request the parties to file their responses, if any, to this Petition by Wednesday, September 22, 2004.

Finally, we have enclosed an additional hard-copy of this Petition to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

Kendra A. Ericson

Enclosures

cc: Parties of Record

EXPEDITED ACTION REQUESTED

**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. 42084

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**PETITION OF DYNOL NOBEL, INC.
FOR LEAVE TO INTERVENE**

Pursuant to 49 C.F.R. §§ 1112.4 and 1117.1, Dyno Nobel, Inc. ("DNI") hereby respectfully requests leave to intervene in this proceeding as a party, in order to address the issues raised by the Surface Transportation Board's ("STB's") order served August 12, 2004 in this docket, which issues, as will be seen, also directly affect DNI. DNI expects to oppose the relief sought by Defendants herein, *to-wit*, vacation of the rate prescription order served on June 9, 2000 in Docket No. 41865. DNI affirms that it will abide by the procedural schedule already in place, and agrees to be bound by the protective order entered in this case on September 16, 2004. DNI's participation as a party will not broaden the issues before the Board in this docket, nor need it delay the ultimate resolution of the case.

DNI has conferred with counsel for Complainant CF Industries, Inc. (“CFI”), and counsel for Defendants Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (“Kaneb”), in an attempt to obtain CFI’s and Kaneb’s consent to DNI’s intervention. Counsel for CFI has indicated that CFI will file its response, if any, to this Petition on or before Wednesday, September 22, 2004. Counsel for Kaneb was unable to take a position either on intervention or on a response date at this time. DNI therefore requests that, in view of the impending September 30 deadline for responses to Kaneb’s September 13 evidentiary filing, the Board request Kaneb likewise to file its reply, if any, to this Petition no later than **Wednesday, September 22.**

In support of this Petition, DNI respectfully states as follows:

1. On June 16, 2003, DNI – a long-time shipper of anhydrous ammonia (“AH”) on Kaneb’s pipeline – filed a complaint before the Board, docketed as No. 42081, challenging the lawfulness of the large rate increase that had been imposed on its traffic by Kaneb as of April 1, 2003. As grounds for its complaint, DNI contended *inter alia* that although the rate on AH traffic shipped to DNI’s industrial plant at Louisiana, Missouri had not been directly covered by the rate prescription issued by the Board in Docket No. 41865, CF Industries Inc. v. Koch Pipeline Company, L.P. (served May 9, 2000), *aff’d sub nom. CF Industries, Inc. v. STB*, 255 F.3d 816 (D.C. Cir. 2001), DNI was contractually entitled to the benefits of that rate prescription, in that Koch Pipeline Company (Kaneb’s predecessor as owner and operator of the pipeline at issue) had agreed in writing to roll back the increase on DNI’s traffic, and not thereafter to increase the rate while the rate prescription remained in effect.

2. In response, Kaneb denied that the rate prescription in Docket No. 41865

applied to it, and also denied that it was bound by Koch's agreement with DNI, or that the Board should enforce the agreement and order a rate rollback even if it did apply to Kaneb. The parties cross-moved for summary disposition of the rate prescription and associated contractual issues, and further proceedings in Docket No. 42081 have been held in abeyance since October 17, 2003 pending a Board ruling on those cross-motions.

3. Meanwhile, on August 1, 2003, CFI initiated this proceeding with its own complaint against Kaneb, in which it echoed DNI's claim that the Docket No. 41865 rate prescription remained in effect and bound Kaneb as Koch's successor, and also asked that the Board direct Kaneb to comply with the rate prescription order. In response, Kaneb reiterated its claim in Docket No. 42081 that it was not bound by the prescription against Koch, and added a request in the alternative that if the prescription did apply, it be vacated.

4. On August 12, 2004, the Board ruled that the Koch prescription does apply to Kaneb, that it could not be vacated retroactively, and that Kaneb's purported self-help increases in the prescribed rates were therefore unlawful and must be refunded. Thus one of the issues presented by the parties' cross-motions in Docket No. 42081 has now been resolved in this case, against Kaneb.

5. However, the Board's August 12 order also directed Kaneb and CFI to submit further evidence in this proceeding regarding whether the Koch prescription should be lifted prospectively, based on changed circumstances. Because a ruling in favor of Kaneb on this issue, in this case, would undercut the predicate for continued contractual application of the prescription to DNI's rate, without first affording DNI the opportunity to address the issue on its merits in its own case, DNI has no alternative

other than to seek leave to address that issue in this case, in order to protect its vital interests.

6. DNI seeks leave to intervene solely to address the issues already raised by the Board herein: whether Kaneb has shown that the existing prescription should be modified or lifted to allow Kaneb to increase its prescribed rates, and if so, what magnitude of increase is justified by Kaneb's evidentiary showing. None of the other issues¹ raised in DNI's own case are presented in this case, and accordingly DNI has no need or wish to address them here. However, because DNI will, as a practical matter, be bound by the Board's ruling in this case on the rate prescription issues, justice requires that it be afforded an opportunity to protect its interests by addressing those issues as a party to this case.

WHEREFORE, DNI respectfully requests that the Board grant it leave to intervene and participate in further proceedings in this docket, as a party.

Furthermore, in light of the September 30, 2004 due date for responses to Kaneb's September 13 filing, DNI requests that the Board rule on this Motion on an expedited basis, and to that end DNI asks that the Board request Kaneb to file its response, if any, to this Petition on or before Wednesday, September 22, 2004.

¹Specifically, issues related to the applicability of the former Interstate Commerce Commission's "Contract Rates Policy" to pipelines such as Kaneb that are subject to STB jurisdiction, and the issue of whether Kaneb's posted rate increases were unreasonably discriminatory against DNI, are presented in Docket No. 42081 but not in this docket.

Respectfully Submitted,

DYNO NOBEL INC.

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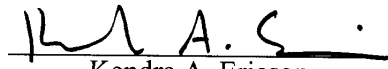
Dated: September 17, 2004

C. Michael Loftus
Donald G. Avery
Kendra A. Ericson
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

(202) 347-7170

Certificate of Service

I hereby certify that I have this 17th day of September, 2004, caused copies of the foregoing "Petition of Dyno Nobel, Inc. for Leave to Intervene" to be served upon counsel for all parties of record, by hand delivery and electronic mail, in accordance with the Board's Rules of Practice.


Kendra A. Ericson