

**UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD**

CF INDUSTRIES, INC.,	)	
Complainant,	)	
	)	
v.	)	
	)	
KANEB PIPE LINE PARTNERS, L.P.,	)	Docket No. 42084
	)	
and	)	
	)	
KANEB PIPE LINE OPERATING	)	
PARTNERSHIP, L.P.,	)	
Defendants.	)	

**OPPOSITION OF KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
TO DYNO NOBEL, INC.'S PETITION TO INTERVENE**

Pursuant to 49 C.F.R. § 1104.13 (2003), Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, “Kaneb”), hereby submit their opposition to the September 17, 2004 petition of Dyno Nobel, Inc. (“Dyno Nobel”) to intervene in the above-captioned proceeding.

Dyno Nobel’s untimely petition to intervene comes more than one year after this proceeding was initiated by the August 1, 2003 complaint of CF Industries, Inc. and more than 30 days after the Board issued its decision in this proceeding,¹ giving Dyno Nobel ample time to intervene prior to this late stage of the proceeding. Moreover, in its decision, the Board set a procedural schedule in which all evidence would be submitted

¹ CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P., STB Docket No. 42084 (STB served August 12, 2004) (“August 11 Decision”).

by October 4, 2004.² Given these short deadlines, the Board did not contemplate the entry of new and additional parties to the proceeding, nor should it permit such a late intervention.

There is no need for Dyno Nobel to intervene in this proceeding. As noted in the Dyno Nobel petition, Dyno Nobel has a case against Kaneb that is currently pending before the Board.³ Dyno Nobel's interests were raised in that proceeding and its interests will be adequately protected there. Furthermore, this proceeding involves only one issue: whether the Board can or should lift the rate prescription it imposed upon Kaneb's predecessor in the Koch case.⁴ The Koch rate prescription does not apply to Dyno Nobel's rates. Dyno Nobel acknowledged in its petition to intervene that the rates it has challenged in its own proceeding are "not directly covered by the rate prescription issued by the Board in Docket No. 41865 [sic]."⁵ Given that Dyno Nobel's rates are not subject to the rate prescription at issue in this proceeding, and that Dyno Nobel's interests are fully protected in its own case, it should not be granted leave to intervene in this proceeding.

Finally, allowing Dyno Nobel to intervene will unnecessarily complicate and delay this case. Although Dyno Nobel claims that its participation in this proceeding

² Pursuant to a Joint Motion for Extension of Time granted by the Board on September 16, 2004, the final evidentiary submission is now due on October 7, 2004.

³ Dyno Nobel's complaint against Kaneb is pending in STB Docket No. 42081.

⁴ CF Industries v. Koch Pipeline Company, L.P., 4 S.T.B. 637 (2000), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001).

⁵ Petition to intervene at 2. The Koch docket to which Dyno Nobel presumably refers is STB Docket No. 41685. Although Dyno Nobel claims that it was contractually entitled to the benefits of the Koch rate prescription, Kaneb contests this issue and is litigating it in the Dyno Nobel proceeding.

would not broaden the issues before the Board in this docket, its petition raises an issue that is not currently before the Board. Specifically, Dyno Nobel states that it:

[S]eeks 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.⁶

Dyno Nobel's statement clearly confuses the issues before the Board in this proceeding. The issue before the Board in this proceeding is simply "whether it can or should alter or lift the Koch prescription."⁷ Kaneb has submitted evidence on this issue in accordance with the Board's August 11 Decision. However, Kaneb is not seeking to increase its rates at all in this proceeding. Should Dyno Nobel be permitted to intervene and submit evidence regarding the issues it mistakenly claims are before the Board, it would unnecessarily complicate the proceeding and create delay.

THEREFORE, given the untimely nature of Dyno Nobel's petition after it has had more than one year to intervene; that Dyno Nobel's rates are not subject to the Koch prescription; that Dyno Nobel's interests are fully protected in its own complaint proceeding currently pending before the Board; and that Dyno Nobel's participation will unnecessarily complicate and delay the proceedings, Kaneb respectfully requests that the Board deny Dyno Nobel's petition to intervene.

⁶ Petition to intervene at 4 (emphasis added).

⁷ August 11 Decision at 4.

Respectfully submitted,



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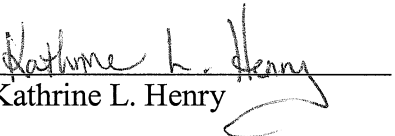
Attorneys for Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dated: September 22, 2004

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 hand delivery upon Counsel for Dyno Nobel, Inc. and upon all parties of record in this proceeding, Docket No. 42084.

Dated at Washington, D.C., this 22nd day of September 2004.


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