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AND AFFILIATED PARTNERSHIPS

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212184

October 6, 2004

VIA HAND DELIVERY

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

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Office of Proceedings

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Publications

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Re: *CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P.*
Docket No. 42084

Dear Secretary Williams:

Enclosed for filing please find an original and ten (10) copies of CF Industries, Inc.'s Motion To Compel. Please date stamp the extra copies of this cover letter and the filing and return them to our messenger. Thank you for your assistance in this matter.

Sincerely,



Mitchell F. Hertz

:dr

Enclosure

Chicago

London

Los Angeles

New York

San Francisco

**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

212184

ENTERED
Office of Proceedings

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Part of
Public Record

CF INDUSTRIES, INC.'S MOTION TO COMPEL

Pursuant to 49 C.F.R. § 1114.31 (2004), CF Industries, Inc. ("CFI") requests that the Surface Transportation Board ("Board") compel Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb") to answer CFI's discovery requests.

Under the Board's regulations, CFI has a right to conduct discovery in this proceeding: "[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding."¹ Furthermore, "[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval."² The Board emphasized this rule in a prior proceeding relating

¹ 49 C.F.R. § 1114.21(a)(1).

² 49 C.F.R. § 1114.21(b).

to this very pipeline, where it held: "Pursuant to 49 CFR 1114.21, the parties are permitted to conduct discovery and depositions without prior Board approval."³

On September 16, 2004, in accordance with the Board's rules, CFI served on Kaneb discovery requests designed to clarify specific statements and evidence presented in Kaneb's September 13th Filing.⁴ Kaneb has refused to answer CFI's discovery. Kaneb has objected to all of CFI's requests on the grounds that (i) "it is clear from the Board's decision to set a compressed schedule for submission of evidence and the absence of any provision for discovery that the Board did not intend for the parties to conduct discovery;" (ii) discovery is not necessary to determine whether circumstances have changed on the pipeline; and (iii) that the discovery "is not reasonably calculated to lead to the discovery of admissible evidence."⁵

Kaneb's arguments are baseless. First, the Board was not required in its *August 11 Order*⁶ to provide for discovery because the regulations already provide such procedures. CFI has the right to conduct discovery and nothing in the *August 11 Order* changed those rights.

Second, CFI has a due process right to "be fully apprised of the evidence submitted or to be considered, and must be given opportunity ... to inspect documents, and to offer evidence in explanation or rebuttal."⁷ CFI's discovery goes to the specific evidence that Kaneb presented and it is entitled to responses.

Third, CFI's discovery directly referenced Kaneb's September 13th Filing and dealt squarely with the issues raised in this proceeding. By arguing that the discovery will not lead to

³ *CF Industries, Inc. v. Koch Pipeline Company, L.P.*, STB Docket No. 41685 (May 6, 1997).

⁴ A copy of CFI's discovery request is attached as Appendix A.

⁵ A copy of Kaneb's refusal to answer the discovery requests is attached as Appendix B.

⁶ See *CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P., et al.*, STB Docket No. 42084 (August 11, 2004) ("*August 11 Order*").

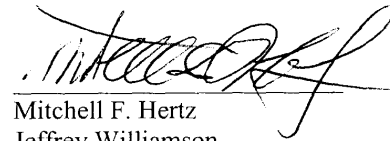
⁷ *ICC v. Louisville & Nashville RR Co.*, 33 S.Ct. 185 at 187 (1913).

admissible evidence, Kaneb appears to be arguing that its own evidence is irrelevant. Unless it concedes that point, however, CFI is entitled to explore the facts underlying its unsubstantiated allegations.

Therefore, CFI requests that the Board compel Kaneb to answer fully CFI's discovery requests within three business days.

Respectfully submitted,

CF Industries, Inc.



Mitchell F. Hertz
Jeffrey Williamson
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
Tel: (202) 879-5270

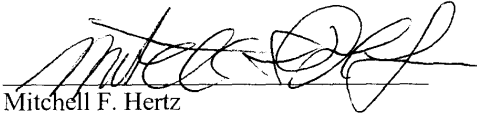
Counsel for **CF Industries, Inc.**

Dated: October 6, 2004

CERTIFICATE OF SERVICE

I certify that I have this day served copies of CF Industries, Inc.'s Motion to Compel on all parties in this proceeding by hand delivery.

Dated at Washington, DC, this 6th day of October, 2004.



Mitchell F. Hertz

APPENDIX A

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
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September 16, 2004

Via Hand Delivery

Pamela J. Anderson
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3877

Re: *CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P.*
and Kaneb Pipe Line Operating Partnership, L.P.,
STB Docket No. 42084

Dear Pamela:

Enclosed is CF Industries, Inc.'s First Set of Interrogatories, Requests for Production of Documents and Admissions Directed to Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. In light of the expedited procedural schedule in this docket, CF Industries is requesting responses no later than September 24, 2004. However, CF Industries would appreciate responses to these requests as they become available.

We appreciate your continued cooperation as we work on this expedited timeframe.

Sincerely,



Mitchell F. Hertz

MFH:dr

Enclosure

Chicago

London

Los Angeles

New York

San Francisco

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

CF Industries, Inc.	)	
Complainant,	)	
	)	
v.	)	Docket No. 42084
Kaneb Pipe Line Partners, L.P.	)	
and	)	
Kaneb Pipe Line Operating Partnership, L.P.,	)	
Defendants.	)	

**CF INDUSTRIES, INC.'S
FIRST SET OF INTERROGATORIES, REQUESTS FOR
PRODUCTION OF DOCUMENTS AND ADMISSIONS
DIRECTED TO KANEB PIPE LINE PARTNERS, L.P. AND
KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.**

Pursuant to 49 C.F.R. §§ 1114.26, 1114.28, CF Industries, Inc. hereby submits the following interrogatories, requests for admissions and requests for production of documents to Koch Pipeline Company, L.P. Please provide responses to these interrogatories and requests by September 24, 2004.

DEFINITIONS

1. "Kaneb" means Kaneb Pipe Line Partners, L.P., Kaneb Pipe Line Operating Partnership, L.P. their agents, employees, officers, directors, principals and other representatives; their predecessors, successors, affiliates, subsidiaries, or parent corporations, if any, collectively and singly, and their agents, employees, officers, directors, principals or other representatives.
2. Pipeline refers to the anhydrous ammonia pipeline owned by Kaneb, formerly owned by Koch Pipeline Company, L.P.

INSTRUCTIONS

1. "Document" is used herein in the fullest sense and includes, but is not limited to, the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, electronic mail, telegram, meeting minute, memorandum, statement, book, record, survey, map, study, handwritten note, working paper, chart, tabulation, graph, tape, data sheet, data processing card, electronic or computer file, electronic database, printout, audiotape, videotape, photographs, microfilm, index, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication, or any other data compilation in your possession, custody or control, including all drafts of all such documents.

2. Documents not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to, or explain the documents which are called for by this First Request, or if such documents are attached to documents called for by this First Request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations, or similar materials.

3. If any document requested to be produced was, but is no longer, in your possession or subject to your control or is no longer in existence, describe the document (including without limitation author(s), addresses and subject matter), and state whether it: (a) is missing or lost; (b) has been destroyed; (c) has been transferred, voluntarily or involuntarily to others and if so to whom; or (d) otherwise disposed of. In each instance explain the circumstances surrounding and the authorization for such disposition and state the approximate date thereof.

4. All documents shall be produced either (1) as they are kept in the usual course of business and in such a fashion as to clearly indicate the identity of the file in which each document was located, or (2) organized and labeled to correspond with the specific request for which the document is produced.

5. Whenever used herein, the singular includes plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" means "any and all;" the word "any" means "any and all;" the word "including" means "including without limitation."

6. When the term "identify" is used with regard to a person or business entity, provide the name and address of such person or business entity.

7. When the term "identify" is used with respect to a document, provide the date, author, addressee, type of document, identify its last known custodian and location and provide a summary of its material terms, conditions and provisions.

8. When the term "identify" is used with respect to a particular subject matter, state all of the facts that are known which refer or relate to that subject matter, specify each event, occurrence and instance which refers or relates to that subject matter and identify all persons having knowledge of that subject matter.

9. The term "relating to" includes pertaining to, referring to, or having as its subject matter, directly or indirectly, expressly or impliedly, the subject matter of the specific request.

10. In the event that any document called for by this request is withheld on the basis of any claim of privilege or any similar claim, that document shall be identified as follows: author; addressee; indicated or blind copies; date; subject matter; number of pages; attachments or appendices; all persons to whom distributed, shown or explained; present custodian; and nature of the privilege or similar claim asserted.

11. These requests for documents and data are not limited as to time period unless stated.

12. This is a continuing request for production of documents and data. If after making your initial production you obtain or become aware of any further document(s) or data responsive to this request, you are required to produce such additional document(s).

INTERROGATORIES AND REQUESTS FOR ADMISSIONS

1. Identify all workpapers supporting Kaneb's Opening Evidence, filed September 13, 2004 in the captioned proceeding.

2. Provide electronic copies of all spreadsheets filed with Kaneb's Opening Evidence, in Excel format with all cells and formulas in tact.

3. Identify all business plans relating to the Pipeline.

4. Reference: Graham VS at 5: Identify all documents relating to the future annual cost of pigging operations for the Pipeline.

5. Reference: Graham VS at 5: Identify all documents relating to future property taxes for the Pipeline.

6. Admit that Kaneb has no current plans to expend additional capital to relieve "the bottleneck in the southern end of the system" referenced at Graham VS at 5.

7. Identify all future construction budgets for the Pipeline.

8. Reference: Graham VS at 6: Identify all documents relating to future capital expenditures for the Pipeline.

9. Reference: Graham VS at 6-7 and McElroy VS at 2: Identify all documents relating to future costs, revenues and volumes for the Pipeline.

10. Reference: Doherty VS at 2: Identify the Confidential Descriptive Memorandum.

11. Reference: Doherty VS at 2: Identify all documents relating to the \$160 million non-binding cash bid submitted by Kaneb on or about April 11, 2002.
12. Reference: Doherty VS at 3: Describe in detail the "additional facts regarding the costs and benefits associated with the purchase of Koch's pipeline assets," and provide all documents relating thereto.
13. Reference: Doherty VS at 3: Identify all documents relating to the \$125 million final bid submitted by Kaneb on May 31, 2002.
14. Reference: Doherty VS at 3: Identify all documents relating to the due diligence review and financial valuation that Kaneb performed relating to Koch's pipeline assets.
15. Reference: Doherty VS at 3: Describe in detail the basis for Kaneb increasing its "final bid" of \$125 million to the \$140 million purchase price and identify all documents relating thereto.
16. Identify all documents relating to the manner in which Kaneb values assets or companies that it may acquire.
17. Reference: Doherty VS at 3: Identify all support for, or documents relating to, the statement: "The Company believed that \$140 million was a fair representation of the market value of the Koch pipeline assets."
18. Reference: McElroy VS at 2: Identify the steps Kaneb intends to take to increase volumes on the Pipeline.
19. Reference: McElroy VS at 2: By facility owned by non-affiliated entities and connected to the pipeline, state the date on which the facility ceased operations.
20. Reference: Van Hoeke VS at Exhibit 2: Provide a spreadsheet showing the net original cost rate base of the Pipeline since 1997. This spreadsheet should show on an annual

basis the original investment, accumulated depreciation, additions to rate base and working capital.

21. Reference: Van Hoeke VS at 5: Identify the amount of general and administrative expense, as well as any other expense, allocated to Kaneb from corporate parents or affiliates and describe in detail the methodology Kaneb uses for that allocation.

22. Reference: Van Hoeke VS at 6: Identify the "third party appraisal which was conducted at the time of the acquisition."

23. Reference: Van Hoeke VS at 6: Identify the annual depreciation percentages used for the Pipeline.

24. Did Kaneb or any of its affiliates or subsidiaries record an acquisition premium on its books when it acquired the Pipeline? If so, state which entity and the amount of the acquisition premium.

25. Describe in detail and quantify the benefits that shippers on the Pipeline have received due to Kaneb's ownership vis-à-vis Koch's ownership.

26. Identify any presentations or reports issued to securities analysts by Kaneb relating to the Pipeline.

27. Identify any minutes of the Board of Directors of Kaneb Pipe Line Company LLC relating to the Pipeline.

28. Identify all documents relating to Kaneb's rates implemented on April 1, 2003.

DOCUMENT REQUESTS

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2. Provide all business plans relating to the Pipeline.
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5. Provide all future construction budgets for the Pipeline.
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13. Provide all documents relating to the manner in which Kaneb values assets or companies that it may acquire.

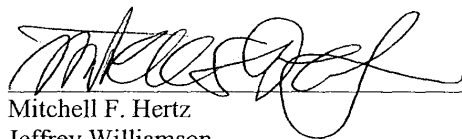
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16. Provide any presentations or reports issued to securities analysts by Kaneb relating to the Pipeline.

17. Provide copies of any minutes of the Board of Directors of Kaneb Pipe Line Company LLC relating to the Pipeline.

18. Provide all documents relating to Kaneb's rates implemented on April 1, 2003.



Mitchell F. Hertz
Jeffrey Williamson
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Counsel for
CF Industries, Inc.

Dated: September 16, 2004

APPENDIX B

**VanNess
Feldman**
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(206) 623-9372

Kathrine L. Henry
(202) 298-1824
klh@vnf.com

October 1, 2004

VIA HAND DELIVERY

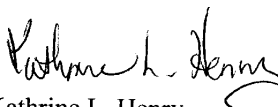
Mitchell F. Hertz
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P.
and Kaneb Pipe Line Operating Partnership, L.P.,
STB Docket No. 42084

Dear Mitch:

In accordance with our verbal agreement of last Friday based on the procedural schedule in this docket, please find enclosed Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.'s Objections to CF Industries, Inc.'s First Set of Interrogatories, Requests for Production of Documents and Admissions.

Sincerely,


Kathrine L. Henry

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD

CF Industries, Inc.,	)	
Complainant,	)	
	)	
v.	)	Docket No. 42084
	)	
Kaneb Pipe Line Partners, L.P.	)	
	)	
and	)	
	)	
Kaneb Pipe Line Operating Partnership, L.P.,	)	
Defendants.	)	

**KANEb PIPE LINE PARTNERS, L.P. AND
KANEb PIPE LINE OPERATING PARTNERSHIP, L.P.'S
OBJECTIONS TO CF INDUSTRIES, INC.'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION
OF DOCUMENTS AND ADMISSIONS**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.27, Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L. P. (collectively, "Kaneb") hereby provide the following responses to CF Industries, Inc.'s (CFI) First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents.

General Objection

Kaneb generally objects to CFI's First Set of Interrogatories, Requests for Production of Documents and Admissions for the following reasons. The only issue before the Board at this stage of the proceedings in this docket is whether to vacate the rate prescription ordered in the May 3, 2000 Koch decision. Kaneb is not requesting that the Board prescribe a new rate or modify the existing prescription, which would require an updated revenue adequacy calculation.

In its August 11, 2004 decision in this proceeding, the Board directed Kaneb to submit evidence to support its claim of material changed circumstances by September 13, 2004. The decision further provided that CFI's evidence is due on September 27, 2004, and Kaneb's rebuttal on October 4, 2004. (The latter two dates have been extended by the Board to September 30 and October 7, respectively.) It is clear from the Board's decision to set a compressed schedule for submission of evidence and the absence of any provision for discovery that the Board did not intend for the parties to conduct discovery. Nor is discovery necessary for the Board to determine whether circumstances have materially changed on the pipeline since the Koch decision was issued such that the factual

underpinnings of the Koch prescription are no longer valid. Kaneb has followed the Board's instructions concerning the information that should be included in its evidentiary submission, including verified statements that contain a list of the assets Kaneb purchased and facts that establish that the Koch/Kaneb transaction was arm's length.

The information sought by CFI is not reasonably calculated to lead to the discovery of admissible evidence. In addition, CFI's discovery attempts to raise issues which are inappropriate and irrelevant to the issue before the Board.

INTERROGATORIES AND REQUESTS FOR ADMISSIONS

1. *Identify all workpapers supporting Kaneb's Opening Evidence, filed September 13, 2004 in the captioned proceeding.*

See General Objection above.

2. *Provide electronic copies of all spreadsheets filed with Kaneb's Opening Evidence, in Excel format with all cells and formulas in tact.*

See General Objection above.

3. *Identify all business plans relating to the Pipeline.*

See General Objection above. In addition, Kaneb objects to this interrogatory on the ground that it is overly broad and unduly burdensome.

4. *Graham Reference: VS at 5: Identify all documents relating to the future annual cost of pigging operations for the Pipeline.*

See General Objection above.

5. *Reference: Graham VS at 5: Identify all documents relating to future property taxes for the Pipeline.*

See General Objection above.

6. *Admit that Kaneb has no current plans to expend additional capital to relieve "the bottleneck in the southern end of the system" referenced at Graham VS at 5.*

See General Objection above.

7. *Identify all future construction budgets for the Pipeline.*

See General Objection above.

8. *Reference: Graham VS at 6: Identify all documents relating to future capital expenditures for the Pipeline.*

See General Objection above.

9. *Reference: Graham VS at 6-7 and McElroy VS at 2: Identify all documents relating to future costs, revenues and volumes for the Pipeline.*

See General Objection above.

10. *Reference: Doherty VS at 2: Identify the Confidential Descriptive Memorandum.*

See General Objection above.

11. *Reference: Doherty VS at 2: Identify all documents relating to the \$160 million non-binding cash bid submitted by Kaneb on or about April 11, 2002.*

See General Objection above.

12. *Reference: Doherty VS at 3: Describe in detail the "additional facts regarding the costs and benefits associated with the purchase of Koch's pipeline assets," and provide all documents relating thereto.*

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13. *Reference: Doherty VS at 3: Identify all documents relating to the \$125 million final bid submitted by Kaneb on May 31, 2002.*

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14. *Reference: Doherty VS at 3: Identify all documents relating to the due diligence review and financial valuation that Kaneb performed relating to Koch's pipeline assets.*

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16. *Identify all documents relating to the manner in which Kaneb values assets or companies that it may acquire.*

See General Objection above.

17. *Reference: Doherty VS at 3: Identify all support for, or documents relating to, the statement: "The Company believed that \$140 million was a fair representation of the market value of the Koch pipeline assets."*

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20. *Reference: Van Hoeke VS at Exhibit 2: Provide a spreadsheet showing the net original cost rate base of the Pipeline since 1997. This spreadsheet should show on an annual basis the original investment, accumulated depreciation, additions to rate base and working capital.*

See General Objection above.

21. *Reference: Van Hoeke VS at 5: Identify the amount of general and administrative expense, as well as any other expense, allocated to Kaneb from corporate parents or affiliates and describe in detail the methodology Kaneb uses for that allocation.*

See General Objection above.

22. *Reference: Van Hoeke VS at 6: Identify the "third party appraisal which was conducted at the time of the acquisition."*

See General Objection above.

23. *Reference: Van Hoeke VS at 6: Identify the annual depreciation percentages used for the Pipeline.*

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24. *Did Kaneb or any of its affiliates or subsidiaries record an acquisition premium on its books when it acquired the Pipeline? If so, state which entity and the amount of the acquisition premium.*

See General Objection above.

25. *Describe in detail and quantify the benefits that shippers on the Pipeline have received due to Kaneb's ownership vis-à-vis Koch's ownership.*

See General Objection above.

26. *Identify any presentations or reports issued to securities analysts by Kaneb relating to the Pipeline.*

See General Objection above.

27. *Identify any minutes of the Board of Directors of Kaneb Pipe Line Company LLC relating to the Pipeline.*

See General Objection above. In addition, Kaneb objects to this interrogatory on the basis that it is overly broad and unduly burdensome.

28. *Identify all documents relating to Kaneb's rates implemented on April 1, 2003.*

See General Objection above.

DOCUMENT REQUESTS

1. *Provide all workpapers supporting Kaneb's Opening Evidence, filed September 13, 2004 in the captioned proceeding*

See General Objection above.

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11. *Reference: Doherty VS at 3: Provide all documents relating to the due diligence review and financial valuation that Kaneb performed relating to Koch's pipeline assets.*

See General Objection above. In addition, Kaneb objects to this request on the ground that it is overly broad and unduly burdensome.

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13. *Provide all documents relating to the manner in which Kaneb values assets or companies that it may acquire.*

See General Objection above.

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15. *Reference: Van Hoeke VS at 6: Provide the "third party appraisal which was conducted at the time of the acquisition."*

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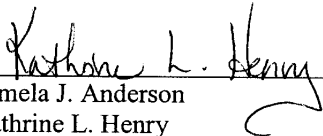
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17. *Provide copies of any minutes of the Board of Directors of Kaneb Pipe Line Company LLC relating to the Pipeline.*

See General Objection above. In addition, Kaneb objects to this request on the basis that it is overly broad and unduly burdensome.

18. *Provide all documents relating to Kaneb's rates implemented on April 1, 2003.*

See General Objection above.



Pamela J. Anderson
Kathrine L. Henry
Julia Scarpino Wood
Van Ness Feldman, PC
1050 Thomas Jefferson St., NW
7th Floor
Washington, D.C. 20007
Telephone: (202) 298-1800
Fax: (202) 338-2361

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

Dated: October 1, 2004