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October 7, 2004

VIA HAND DELIVERY

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



**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 Response To Kaneb's Opening Evidence And Argument. 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,

A handwritten signature in dark ink, appearing to read "Mitchell F. Hertz".

Mitchell F. Hertz

:dr

Enclosure

**EXHIBIT NO. TC-1, ATTACHED TO THE VERIFIED STATEMENT OF
THOMAS W. CARLTON IS IN COLOR.**

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Docket No. NOR 42084

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Counsel for CF Industries, Inc.

**EXHIBIT NO. TC-1, ATTACHED TO THE VERIFIED STATEMENT OF
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¹ Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, “Kaneb”).

Second, Kaneb misunderstood the facts. At the time Kaneb acquired the ammonia pipeline from Koch Pipeline Company, L.P. ("Koch"), it was already public that two major pipeline shippers had shut down their production facilities. See Exhibit A, Verified Statement of Fred A. Mugica. Kaneb failed to reflect this market development in its purchase price.

Third, Kaneb misunderstood the law again. Kaneb thought it could set rates based upon its acquisition price, regardless how imprudent that price. The only reason that Kaneb's pipeline is not earning excessive returns is that it paid too much. *If Koch still owned the pipeline, or if Kaneb had followed Koch's lead and paid predecessor net book cost for the pipeline, the pipeline would be earning well in excess of revenue adequate levels.* See Exhibit B, Verified Statement of Thomas W. Carlton. The Board's precedents do not allow a carrier to set rates based upon acquisition costs for the purpose of increasing prescribed rates to shippers.

Fourth, Kaneb misunderstood the Board's *August 11 Order*. Rather than follow Board precedent by providing a multi-period discounted cash flow analysis to evaluate its rates, Kaneb presented a mere short term snapshot. Kaneb's evidence fails to demonstrate changed circumstances because it fails to present the same type of evidence that underlies the rate prescription.

In light of the foregoing, the Board should deny Kaneb's request to lift the prescription imposed in the *Koch Order*. If the Board were to reopen Kaneb's rates, the result should be a lower prescription.

BACKGROUND

A. In May 2000, The Board Prescribed Maximum Rates For CFI's Shipments After Finding (1) The Pipeline Is Market Dominant And (2) The Pipeline Is Revenue Adequate.

Following complaints by CFI and Farmland Industries, Inc. ("Farmland"), the Board prescribed rates from two origin points to numerous destination points on Kaneb's ammonia pipeline. The Board applied a two-part analysis in that proceeding. At the outset, it examined whether the pipeline was "market dominant" for specific origin/destination pairs used by the complainants. After finding that the pipeline was market dominant, the Board determined that it was revenue adequate. Based upon those findings, the Board prescribed rates for CFI and Farmland.

Market Dominance Analysis. Before prescribing rates, the Board first examined whether the pipeline was "market dominant." After examining intramodal, intermodal, geographic, and product competition, the Board found the pipeline to be market dominant at all but two pipeline points:

In summary, we find that Koch faces effective barge competition at its pipeline destination point at Palmyra, MO, and effective geographic competition from the MAPCO pipeline at Garner, IA. We will not consider the reasonableness of Koch's rates for pipeline service to these two locations. As to the other 19 pipeline destinations at issue, however, we find that Koch faces no effective alternatives to its pipeline.²

Revenue Adequacy Analysis. After finding market dominance, the Board reviewed whether the pipeline was revenue adequate.³ Because of the "cyclical nature of the [ammonia]

² *Koch Order*, 4 S.T.B. at 655.

³ A pipeline is "revenue adequate" when it is "earning sufficient funds to cover its costs and provide sufficient return on investment." See *Koch Order*, 4 S.T.B. at 642.

marketplace,” the Board required the parties to present a multi-period discounted cash flow analysis:

A multi-period DCF analysis best satisfies the goal of both the [Stand-Alone Cost test] and revenue adequacy constraints of ensuring that a carrier is given the opportunity to earn adequate revenues over time. . . . The revenue adequacy constraint of CMP is not satisfied by a single-period snapshot of a carrier’s costs and revenues but rather “is a long-term concept that calls for a company, over time, to average [a] return on investment equal to its cost of capital.”

CF Industries, Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685, 2 S.T.B. 257, 259-60 (1997) (“*Preliminary Koch Order*”) (citation omitted). The Board examined the revenue adequacy of the pipeline by using Koch’s acquisition costs, which also happened to be the net book value on Koch’s predecessor’s books (\$77.2 million).⁴

The Board examined four different DCF analyses in reaching its revenue adequacy determination. In one, for example, the Board determined that the pipeline had fully recovered its total investment costs by 1998. *Koch Order*, 4 S.T.B. at 660-61. In another, the Board compared the pipeline’s yearly return on investment with the railroad industry’s Cost of Capital.⁵ Table 5 of Appendix 11 contained this analysis:

⁴ Thus, the primary issue in this proceeding – whether to use acquisition costs or predecessor investment costs – was never addressed in the prior case because they were one and the same. Indeed, the Board noted that there was no write-up of the pipeline assets after Koch’s acquisition. See *Koch Order*, 4 S.T.B. at 658-59.

⁵ Koch did not attempt to develop a pipeline-specific Cost of Capital and instead used the railroad industry’s Cost of Capital. The Board also used the railroad industry’s Cost of Capital. See *Koch Order*, 4 S.T.B. at 659-60 n. 65; Appendix 11, Table 1, n.1, 4 S.T.B. at 678.

Year	Net Income	Net Investment Base	Return on Investment	Cost of Capital	Revenue Adequacy
1988	7,895,360	76,750,245	10.29%	11.70%	N
1989	10,792,798	75,570,562	14.28%	11.50%	Y
1990	10,639,781	73,787,069	14.42%	11.80%	Y
1991	9,036,555	69,246,917	13.05%	11.60%	Y
1992	11,641,954	65,411,099	17.80%	11.40%	Y
1993	8,298,785	63,977,050	12.97%	11.40%	Y
1994	11,545,385	58,980,000	19.58%	12.20%	Y
1995	9,962,428	55,801,751	17.85%	11.70%	Y
1996	11,833,960	55,002,055	21.52%	11.80%	Y

After examining these four scenarios, the Board found Koch to be revenue adequate.

Because the pipeline was market dominant and revenue adequate, the Board prescribed maximum rates to 19 destination points on the pipeline for CF and 20 destination points on the pipeline for Farmland:

We find that the Koch faces effective barge competition for CF traffic at Palmyra, MO, and effective geographic competition for both CF and Farmland traffic at Garner, IA, but that Koch has market power with respect to the 19 other pipeline destination points that are at issue here. Applying the CMP revenue adequacy constraint, we find that Koch's rate increases to those points are unreasonable because Koch's revenues are adequate under its pre-rate increase structure. As a result, we will award reparations for past pipeline movements to those points, and prescribe maximum reasonable rates at the pre-increase (March 31, 1996) level for future movements.⁶

⁶ *Koch Order*, 4 S.T.B. at 663-64.

B. In 2002, Kaneb Acquired The Pipeline For \$140 Million And Subsequently Attempted To Raise The Prescribed Rates. CFI Challenged Kaneb's Increased Rates And The Board Sided With CFI. Kaneb Now Seeks To Lift The Rate Prescription.

As described in Kaneb's September 13th Filing, Kaneb purchased the ammonia pipeline from Koch in the Fall of 2002 for approximately \$140 million. The assets are essentially the same as those involved in the *Koch Order*. See September 13th Filing at 12-13; 15.

On March 10, 2003, Kaneb attempted to raise the pipeline rates for CFI's shipments by 7% above the maximum prescribed rates. On June 9, 2004, it attempted to raise CFI's rates by another 3.2%. CFI challenged Kaneb's rate increases on the grounds that Kaneb could not increase CFI's prescribed rates without prior Board approval. The Board found for CFI, ordered Kaneb to pay reparations, but offered Kaneb an opportunity to argue that the rate prescription should be lifted. *August 11 Order*, slip op. at 4.

Kaneb's September 13th Filing attempts to justify lifting the rate prescription by noting: (1) Kaneb purchased the pipeline for \$140 million, and this excessive purchase price – not predecessor investment costs – should be used to evaluate the pipeline's revenue adequacy; (2) Kaneb's operating costs and capital expenditures exceed Koch's average operating costs and capital expenditures; and (3) volumes shipped on the pipeline have decreased since the *Koch Order* due to previously announced plant shutdowns.

Because Kaneb paid too much, failed to account for changes in its costs, and ignored that shippers were shutting down their facilities, Kaneb argues that the Board should lift the rate prescription. See September 13th Filing at 9. Even if the Board gives Kaneb the benefit of the doubt on its costs and revenues, the sole reason its pipeline is not earning excessive returns is that Kaneb paid too much.

**THE BOARD DOES NOT HAVE AN ADEQUATE RECORD
TO LIFT THE RATE PRESCRIPTION AND KANEK'S
DISCOVERY STONEWALLING EXACERBATES THE PROBLEM.**

A. The Abbreviated Hearing Process Does Not Allow The Parties To Develop An Adequate Record On The Rate Prescription.

Kaneb's initial evidentiary presentation includes numerous indications about its decision to pay too much for the pipeline. For example, the Doherty Verified Statement mentions several valuation models supporting Kaneb's purchase price but never provides those models. Verified Statement of Edward Doherty at 2-3. Kaneb's evidence also includes numerous unsubstantiated assertions about the pipeline. For example, the Graham Verified Statement provides snapshot evidence about the costs and volumes without any projections for whether these facts will change. *See, generally*, Verified Statement of Joseph Graham. The Board must have a complete record on these issues before it can lift the rate prescription.

CFI has attempted to get more information about Kaneb's unsupported allegations. The Board's regulations state that "[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." 49 C.F.R. § 1114.21(a)(1) (2004). Furthermore, "[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval." 49 C.F.R. § 1114.21(b) (2004). The Board emphasized this rule in the Koch proceeding, where it held: "Pursuant to 49 CFR 1114.21, the parties are permitted to conduct discovery and depositions without prior Board approval." *Koch Preliminary Order*, 2 S.T.B. at 267. Kaneb, however, has refused to respond to CFI's discovery requests. *See* Attachment C, Kaneb's Objections to All of CFI's Discovery Requests. For this reason alone, the Board should reject Kaneb's request to lift the rate prescription.

Kaneb's refusal to respond to discovery is particularly troubling in this proceeding. The Board set this matter for an expedited hearing in order to evaluate quickly whether to lift the rate prescription. Such an expedited hearing requires parties to work in good faith to allow full development of the record. Kaneb's discovery stonewalling makes it clear that it wants to prevent development of an adequate record. Absent such a record, however, the prescription must remain in place. Moreover, there will likely be much more extensive litigation if the Board were to lift the rate prescription without developing an adequate record and Kaneb subsequently attempts to raise rates. Now is the time to develop a reasonable factual record.

Kaneb's rationale for objecting to CFI's discovery is particularly indicative of its intent to limit the record. Kaneb has objected to all of CFI's requests on the grounds that discovery is not permitted (notwithstanding the Board's rules to the contrary) and that the discovery "is not reasonably calculated to lead to the discovery of admissible evidence." *See* Exhibit C at 2. Kaneb must be kidding. CFI's discovery request quotes specific sentences in Kaneb's evidence and then asks for support. Kaneb cannot be heard to argue that its own evidence is irrelevant. Kaneb's unusual argument about the irrelevance of its own evidence aside, CFI has not been able to question why Kaneb's operating costs have increased; what Kaneb's expectations were when it purchased the pipeline; if Kaneb knew about the publicly announced decreased volumes when it purchased the pipeline; or Kaneb's expectations on future volumes, costs, and revenues. The resulting failure to develop an adequate record precludes the lifting of a rate prescription.

As the Supreme Court has stated: "All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to

inspect documents, and to offer evidence in explanation or rebuttal.”⁷ CFI has had no such opportunity.

B. Kaneb’s September 13th Filing Fails To Present The Multi-Year Analysis Required When Reviewing Whether A Carrier Is Revenue Adequate.

Even more disconcerting than Kaneb’s discovery stonewalling is that Kaneb has failed to present the proper evidence in its attempt to justify lifting the rate prescription. Kaneb concedes that the Board should examine the revenue adequacy of the pipeline in determining whether to lift the rate prescription – going so far as to present a witness on the subject. *See* September 13th Filing at 11, 22-23; Verified Statement of Robert G. Van Hoecke. In the previous proceeding, the Board made clear in both the *Preliminary Koch Order* and the *Koch Order* that a revenue adequacy proceeding required an examination of many years’ worth of data, not a single year “snapshot.” The Board noted that a “snapshot” approach to determining revenue adequacy would produce inaccurate results due to the cyclical nature of the industry:

A multi-period DCF analysis best satisfies the goal of both the [Stand-Alone Cost test] and revenue adequacy constraints of ensuring that a carrier is given the opportunity to earn adequate revenues over time. . . . **The revenue adequacy constraint of CMP is not satisfied by a single-period snapshot of a carrier’s costs and revenues but rather “is a long-term concept that calls for a company, over time, to average [a] return on investment equal to its cost of capital.”**⁸

Kaneb failed to present a multi-year analysis on key portions of its presentation. For example, Kaneb presented its operating costs and capital expenditures for 2003 and 2004 only.

⁷ See, e.g., *ICC v. Louisville & Nashville R.R.*, 227 U.S. 88, 93 (1913); *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 63 (D.C. Cir. 1999) (“It is well-established that ‘[a] party is entitled . . . to know the issues on which a decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.’”) (citations omitted).

⁸ *Preliminary Koch Order*, 2 S.T.B. at 259-60 (citation omitted) (emphasis added).

See September 13th Filing at 17. Kaneb presented even more limited data on its return on investment: 2003 and the most recent twelve months. *Id.* at 22. Providing only 1 ½ year's worth of data does not meet the Board's requirement that Kaneb present a multi-year DCF analysis.

The failure of Kaneb's evidence apparently stems from a misunderstanding of the law by Kaneb's expert witness, Mr. Robert G. Van Hoecke. Mr. Van Hoecke incorrectly states that the Board evaluates revenue adequacy by examining a single year:

In Ex Parte No. 393, the Board concluded "that revenue adequacy should be determined on the basis of data for the most recent single calendar year." Historically, the Board has determined the revenue adequacy of rail carriers on an annual calendar year basis.

For illustrative purposes, I have prepared a revenue adequacy calculation for the Ammonia System based on the "most recent single calendar year." (i.e., 2003). In addition, I have also examined the most recent 12 months of operation (i.e., September 2003 through August 2004) to determine Kaneb's achieved ROI.⁹

Mr. Van Hoecke's misstatement of the law is perplexing considering that he was a witness for the pipeline in the Koch case, and should have been aware of the standard used in that case.

Kaneb has failed to present the multi-year DCF analysis required by the Board. Therefore, its September 13th Filing fails on its face to provide sufficient justification for lifting the rate prescription.

**THE AVAILABLE RECORD EVIDENCE DEMONSTRATES
THAT THE BOARD SHOULD NOT LIFT THE RATE PRESCRIPTION.**

Kaneb and CFI agree that the Board must examine whether the key factor underlying the rate prescription – whether the pipeline is revenue adequate – is still valid prior to lifting the rate prescription. The Board cannot simply explore whether there has been a change to a single

⁹ See *id.*, Attachment D, Verified Statement of Robert G. Van Hoecke at 4 (citation omitted).

factor such as operating costs, revenues, volumes, or net investment because these variables will change each year, and such changes do not necessarily mean that the pipeline has ceased to be revenue adequate. For example, increases in operating costs may be offset by decreases in taxes.¹⁰ Without doing at least a cursory revenue adequacy analysis, it is not possible to tell if the rate prescription should be lifted.

In this proceeding, the Board must conduct an analysis similar to the one that it used to set the rate prescription in the *Koch Order*. As such, it must examine whether the pipeline remains revenue adequate. When conducting that analysis, the Board should continue to use predecessor investment costs to set the net investment base because, as demonstrated below, this will allow a return on prudent investment while at the same time protecting captive customers.

A. The Board Should Not Use Kaneb's Acquisition Costs To Evaluate Revenue Adequacy, But Instead Should Use Predecessor Investment Costs.

Kaneb urges the Board to review the pipeline's revenue adequacy by using its \$140 million acquisition cost to set the new investment base for the pipeline assets. *See* September 13th Filing at 15. The Board should reject Kaneb's request. Using acquisition cost as a basis to raise prescribed rates would reward poor investment decisions, harm captive customers, and does not comport with Board precedent. After all, if Koch could not raise rates, why should the sale to Kaneb at an inflated price enable Kaneb to raise rates? Instead, just as it did when it prescribed rates for the pipeline, the Board should use predecessor investment cost when reviewing this pipeline's revenue adequacy.¹¹

¹⁰ In this case, for example, Koch was required to pay income taxes, but Kaneb, as a partnership, is not. This results in a substantial increase in net income for Kaneb.

¹¹ Kaneb cites no law to support the use of acquisition costs in this proceeding. Instead, it only cites to the *Koch Order*. *See id.* at 16. Kaneb misinterprets the issues in that case. In that proceeding, acquisition costs and
(Continued...)

If the Board were to use predecessor investment costs to review whether the pipeline remains revenue adequate, then, **even accepting all other assumptions in Kaneb's September 13th Filing to be valid** (which they are not), there is no basis to lift the rate prescription. In fact, Kaneb earned a 16.8% return in 2003 using predecessor investment costs – well in excess of its Cost of Capital. As demonstrated in the Verified Statement of Thomas W. Carlton, the only reason that the pipeline is not earning excessive returns is because Kaneb paid too much and is attempting to use its inflated purchase price to set a new investment base. This is demonstrated in the chart set forth below:

Kaneb's Revenue Adequacy Using Predecessor Investment Costs

Year	Return on Investment (%) – end of year	Return on Investment (%) – average	Cost of Capital (%) ¹²	Revenue Adequate
1988	10.5		11.7	No
1989	14.5	14.4	11.5	Yes
1990	14.9	14.6	11.8	Yes
1991	13.1	12.9	11.6	Yes
1992	16.6	16.7	11.4	Yes
1993	11.8	11.8	11.4	Yes
1994	17.8	17.1	12.2	Yes
1995	16.1	15.7	11.7	Yes
1996	19.8	19.5	11.8	Yes
1997	20.7	20.3		
1998	21.8	21.4		
1999	21.7	21.3		
2000	19.5	19.1		
2001	13.7	13.3		
2002	20.5	19.9	9.4	Yes
2003	16.8	16.8	9.4	Yes

predecessor investment costs were equal because Koch, unlike Kaneb, paid a reasonable price equal to predecessor net investment. As a result, the Board never addressed which should be used to set net investment base. The only issue was whether it should use acquisition costs/predecessor investment costs or Stand Alone Cost. The Board sided with CFI and used acquisition costs/predecessor investment costs.

¹² Cost of Capital for years 1988-1996 come from Appendix 11, Table 5 of the *Koch Order*, 4 S.T.B. at 682; Cost of Capital for years 2002 and 2003 are from Kaneb's filing. See Verified Statement of Robert G. Van Hoecke at 7.

See Exhibit B, Verified Statement of Thomas W. Carlton. Mr. Carlton's analysis demonstrates that the pipeline has been revenue adequate each year since 1989 using predecessor investment costs. Indeed, the analysis shows that Kaneb would be earning substantially in excess of its Cost of Capital if only it had followed Koch's lead and paid a reasonable price.

This evidence presents the Board with a stark question: If a pipeline with a rate prescription is revenue adequate, should the sale of that pipeline at an excessive price justify lifting the rate prescription and thereby force captive customers to pay more? If the answer is "yes," there will be no incentive for purchasers to pay prudent prices because they can always simply increase rates to captive shippers. As the Federal Energy Regulatory Commission, facing a similar situation, has stated:

The rationale for this policy is a simple one. Without the net book value standard, all that pipelines would have to do to raise rates and obtain greater income would be to buy utility properties from each other at a price higher than original cost and in this very simple way increase the cost of service to consumers.¹³

Moreover, a policy allowing above-book acquisition costs would undermine the Board's decision setting the rate prescription – in other words, Koch could not raise rates because it was revenue adequate, but it could monetize a rate increase by selling the pipeline at an excessive price and thereby achieving the same financial benefit. Such a result would be contrary to the Board's precedent.¹⁴

¹³ *Southern Natural Gas Co.*, 100 FERC ¶ 61,284 at P 16 (2002). See also *Arkla Energy Resources*, 61 FERC ¶ 61,004 1992 WL 424016, at *22 (1992) (noting that deviations from the rule are permitted "only when the purchaser has demonstrated that specific dollar benefits resulted directly from the sale. Such specific dollar benefits may include decreases in rates, improved services, or economies in operation that are clearly related to, and solely the result of, the acquisitions. However, they must be tangible, non-speculative, and quantifiable in monetary terms. The burden of proof for a utility seeking to demonstrate specific dollar benefits is heavy and may be practically impossible to meet.").

¹⁴ See *Railroad Revenue Adequacy – 1988 Determination Ex Parte No. 483*, 6 I.C.C.2d 933 (1990) ("Railroad Revenue Adequacy Order").

1. Using predecessor investment costs in this proceeding complies with Board precedent.

In 1990, the ICC implemented a policy of “[u]s[ing] acquisition costs in lieu of predecessor costs for determining the value of the net investment base *in cases where substantial write-downs of assets had occurred due to reorganizations or mergers.*” See *id.* at 934 (emphasis added). The ICC also stated “we do not mean to suggest that we will accept the sale price of rail assets as a substitute for old book values in every case. Our decision will be driven by what is the most accurate and reasonable valuation in each particular case.” *Id.* at 941.

It is reasonable to use acquisition costs to set the investment base when reviewing a railroad’s revenue adequacy because, as the ICC noted, use of acquisition costs in the railroad industry tended to result in a significant write-down of the investment base. As such, it protected customers while at the same time allowing investors a chance to earn a reasonable return on their actual investments. The ICC recognized, however, that this may not be true in all circumstances and held that it was not bound to use acquisition costs in all revenue adequacy reviews, but instead would review this policy on a case-by-case basis. *Id.*

The ICC and Board have made good use of that flexibility. Besides the Koch/Kaneb pipeline, the ICC has examined one other pipeline’s rates – and the ICC declined to use acquisition costs to set the investment base. In that proceeding, the ICC used a “hybrid” model that considered original book costs.¹⁵ *Ashley Creek* stands for the proposition that the Board

¹⁵ See *Ashley Creek Phosphate Co. v. SF Phosphates Ltd. Co.*, 1992 WL 383335, at *3 (S.T.B. 1992) (“*Ashley Creek*”) (“Contrary to ACP’s assertion, we conclude that the acquisition cost of this pipeline is not relevant to our methodology determination here, nor does it prevent consolidation. The methodology we developed in ACP v. CPL computes the maximum reasonable rate levels based on the costs of the existing pipeline adjusted for any inefficiencies in investment or operation.”).

does not have a single method for setting investment base (as Kaneb suggests), but rather sets the investment base by examining the particular facts in each case.

The facts of this proceeding warrant using predecessor investment costs when considering whether to lift the rate prescription. Most importantly, using acquisition costs would reward imprudent investment and harm captive customers such as CFI that the Board has already found to be subject to the pipeline's market power.

2. *A change in ownership does not justify using acquisition costs to reset net investment base when the result would be increasing prescribed rates.*

Typically, rates are tied to the assets in rate base. As Kaneb admits in its September 13th Filing, there have been no significant changes to the pipeline assets since the *Koch Order*. See September 13th Filing at 15. Because there have been no changes to the assets themselves, there is no reason to change the rate prescription.

The only major change to the pipeline is ownership, and this change alone does not justify lifting the rate prescription in this case. Kaneb argues that the change in ownership should lead to a change in the net investment base by automatically setting the new net investment base equal to the acquisition costs. September 13th Filing at 17. While it may be appropriate to reset the net investment base using acquisition costs in cases where there is a change in ownership **and** the acquisition costs are below book costs, such is not the case here.

In the *Railroad Revenue Adequacy Order*, the ICC instituted the policy of using acquisition costs to examine revenue adequacy in cases where railroads were sold for less than their book costs. This made sense: it lowered rates for customers while still allowing investors to

earn a return on their investment.¹⁶ This is not the case, however, when acquisition costs exceed book costs. In such circumstances, and where there are captive customers (such as in this proceeding), automatically allowing investors to earn a return on their acquisition costs by using such costs to set the net investment base fails to provide buyers with the incentive to properly value the assets. Instead, the buyer could overpay, knowing that it could automatically pass through any misjudgment on its part to captive customers.¹⁷

Most regulatory agencies protect customers from the potential detrimental rate impacts of ownership changes in one of two ways. First, they continue to use book costs to set rates. *See* p. 13, above. Second, they review the merger or acquisition of the regulated asset and condition approval of the transaction on the parties implementing a “hold-harmless” policy that protects captive customers.¹⁸ The Board did not have authority to review the Koch/Kaneb transaction prior to its consummation, and therefore could not require a “hold harmless” commitment from Kaneb. But it can achieve the same result by using predecessor investment costs when reviewing Kaneb’s revenue adequacy. This would effectively require the investors to ensure that the captive customers are no worse off than before the transfer of assets.

¹⁶ The ICC reasoned that because the new investors only invested the acquisition amount, not the book amount, they should not be able to collect a return on an amount they did not invest. 6 I.C.C.2d at 939-42.

¹⁷ Note that this is not necessarily true if there are no captive customers. If the customers have other reasonable alternatives, they could cease using the railroad/pipeline and the investors would experience a reduction in volumes and revenues. In contrast, a pipeline with captive customers will be able to pass through excessive investment costs, even in an arms’ length transaction.

¹⁸ *See, e.g., Westar Energy, Inc., et al.*, 104 FERC ¶ 61,170 at pp. 15-17 (2003) (hold harmless provisions “will ensure that Westar’s customers will pay no more than they would have paid to Westar absent the transfer”); *American Elec. Power Serv. Corp., et al.*, 100 FERC ¶ 61,346 at P 71 (2002) (requiring AEP to hold customers harmless).

3. *Using Acquisition Costs in this proceeding would harm captive customers.*

The Board is required to “encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices.” 49 U.S.C. § 15101 (a)(4). In the conference report discussing the Interstate Commerce Commission Termination Act of 1995, the conferees made clear that one of the intents of the statute was to provide “customer protection.” H.R. Conf. Rep. No. 104-422 (1995). The Board found in the *Koch Order* that it is necessary to prescribe rates because CFI was a captive customer of the pipeline and had no other reasonable transportation alternatives from its Donaldsonville, Louisiana plant. The lack of competition, if left unchecked, would have resulted in unfair and destructive competitive practices.

CFI still has no other reasonable alternatives to Kaneb’s pipeline for shipments from its Donaldsonville, Louisiana ammonia plant to destinations on Kaneb’s pipeline. If the Board lifts the rate prescription as a result of using Kaneb’s acquisition costs to review the pipeline’s revenue adequacy, then CFI would be forced to pay higher rates for the same service. Equally important, without a rate prescription, Kaneb would be permitted to raise rates in the future with impunity, and CFI will have no ability to avoid the higher rates for its Donaldsonville production. The Board must retain the rate prescription to protect captive customers.

4. *Therefore, the Board should use predecessor investment costs to establish the pipeline’s investment base. This would comport with the principles in the Railroad Revenue Adequacy Order.*

In the *Railroad Revenue Adequacy Order*, the ICC cited several reasons for using acquisition costs, most importantly, that it allowed investors a return on investment. See 6 I.C.C.2d at 935, 940. Using predecessor investment costs in this proceeding is appropriate for a similar reason: it allows a return on *prudent* investment, but forces the investor to assume the

risk of imprudent investments instead of shifting such risks to captive customers. In other words, using predecessor investment costs in this proceeding provides the investors the same incentives as they would have in a fully competitive market.

a. **Using predecessor investment costs in this proceeding will allow Kaneb a return on prudent investments.**

The Board has already found Koch, the prior owner, to be revenue adequate under the prescribed rates that were established using the predecessor investment costs.¹⁹ Using predecessor investment costs would also allow Kaneb to receive a return on its investment – provided that Kaneb did the proper diligence and properly valued the pipeline.

The Supreme Court has noted that the value of a regulated asset is a function of its rates.²⁰ This is intuitive since revenues are determined by rates and volumes. In this proceeding, the pipeline in question already had fixed rates prescribed by the Board for a number of origin/destination points. Presumably, Kaneb had access to information about the pipeline's volumes when it purchased the pipeline. Therefore, Kaneb was in the position to determine the revenues it was likely to collect and establish its bid price based on that likely revenue (although Kaneb refuses to provide its investment analysis to CFI or the Board). To the extent that Kaneb did proper diligence and properly valued the pipeline, Kaneb should be in a position to earn a sufficient return, even at the prescribed rates.

¹⁹ Indeed, Koch was earning significantly in excess of the amount needed to be revenue adequate.

²⁰ See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 601 & n.9 (1944) (“‘[F]air value’ is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon ‘fair value’ when the value of the going enterprise depends on earnings under whatever rates may be anticipated.” And, in the footnote: “We recently stated that the meaning of the word ‘value’ is to be gathered ‘from the purpose for which a valuation is being made. Thus the question in a valuation for rate making is how much a utility will be allowed to earn. The basic question in a valuation for reorganization purposes is how much the enterprise in all probability can earn.’”) (citation omitted).

To the extent that Kaneb improperly valued the pipeline, however, it should not be permitted to shift the risk of its imprudent valuation to captive customers. Kaneb was the decision maker in the Koch-Kaneb transaction and should be responsible for its investment decisions. To the extent that it purchased the pipeline for more than was justified by the prescribed rates (the prescribed rates already had built in a substantial return on the predecessor investment costs), then Kaneb should be liable for its decision.

In contrast to Kaneb's complete control over the valuation process, captive customers such as CFI had no way of protecting themselves from Kaneb's imprudent bid and had no responsibility for establishing the sale price. Therefore, they should not bear the risk of Kaneb's investment decisions. If the Board were to lift the prescription simply because Kaneb made an imprudent purchase decision and overvalued the pipeline, then the Board would be shifting the risk of Kaneb's imprudence to CFI, which the Board has already found to have no competitive transportation alternatives from its Donaldsonville, Louisiana plant. Moreover, the Board would be creating perverse incentives that allow revenue adequate carriers to monetize otherwise precluded rate increases by sales at inflated prices, and it would be encouraging buyers to overpay for pipeline assets and pass-through those higher costs to captive customers in the form of higher rates.²¹

If the Board wants to encourage prudent investment decisions while still allowing investors to earn a reasonable rate of return, it should not allow buyers to use acquisition costs to set rates when acquisition costs exceed book value and there are captive customers. Instead, the Board should use predecessor investment costs because this would ensure that the rates do not

²¹ For example, according to the Verified Statement of Thomas W. Carlton, the net investment for 2002, when Kaneb purchased the pipeline, was \$45.8 million (the average net investment for the year was \$47 million). Kaneb purchased the pipeline for approximately \$100 million more than book value (or roughly three times book value) and is now trying to pass those costs on to customers.

increase as a result of the transaction, while providing investors with an incentive to properly value assets.²²

- b. **Using predecessor investment costs in this proceeding is appropriate because the Board has already found the need to regulate the Kaneb pipeline and using predecessor investment costs would be in line with the way other regulatory agencies set rates.**

In the *Railroad Revenue Adequacy Order*, the ICC noted that another reason for using acquisition costs to set investment base was that unlike most regulated industries, railroads were not heavily regulated. See 6 I.C.C.2d at 941-42. Therefore, even though the ICC recognized that most regulatory agencies used predecessor investment costs or book costs when establishing rates, it stated that the lightened regulatory standard for railroads could justify using a different ratemaking methodology for railroads. *Id.* at 940-41.

Unlike railroads, though, the Kaneb pipeline *is* rate regulated, at least with regard to its rates to CFI, and using predecessor investment costs or book costs is therefore more appropriate. As discussed above, the Board has already found Kaneb's pipeline to be market dominant from certain origin points and has prescribed rates. Allowing evasion of those prescribed rates simply because there is a new owner that paid an excessive amount for the pipeline would effectively result in an abdication of regulatory responsibility that would harm captive customers.

Therefore, the Kaneb pipeline has more in common with regulated industries such as gas pipelines or electric transmission systems. And as the ICC noted in the *Railroad Revenue*

²² It should be noted that the Board is not required to conduct a prudency review. If it establishes the proper standard, then the buyer will be required to accept the risks of all of its assumptions, which relieves the Board of the responsibility to review those assumptions. This requires making the investor assume responsibility for overpaying for its purchase. Using predecessor investment costs in those cases when the acquisition costs exceed predecessor investment costs and there are captive customers does exactly that. To the extent that the buyer properly valued the pipeline and made the correct determinations with regard to volumes and costs, then the buyer would be in a position to earn a sufficient return on its investment. To the extent that the buyer improperly valued the pipeline or made incorrect assumptions, then the buyer would be responsible. Using the proper standard simplifies the Board's analysis.

Adequacy Order, other regulatory agencies tend to use predecessor investment costs or book costs when determining rates. As discussed above, those regulatory agencies use predecessor investment cost specifically to prevent the rate increase result that Kaneb seeks in this case. See p. 13, above.²³

The Board should recognize that the Kaneb pipeline, unlike the railroad industry, is already rate regulated by the Board in order to protect customers such as CFI. Therefore, the Board should choose a ratemaking standard that continues to protect the pipeline's captive customers.

In summary, the Board should not use Kaneb's acquisition costs to evaluate whether the pipeline remains revenue adequate. Instead, it should use predecessor investment costs. In the *Railroad Revenue Adequacy Order*, the ICC noted that it retained the authority to set net investment base in a manner that best fit the facts of a particular case. In cases such as this one, where (i) there is a rate prescription in effect; (ii) the Board has already found there to be captive customers; and (iii) acquisition costs exceed predecessor investment costs. This mimics market principles by allowing investors a return on prudent investment. At the same time, it protects captive customers by preventing the investor from shifting the risk of imprudent investment decisions to the captive shippers.

B. To The Extent That Kaneb Misjudged Future Costs Or Volumes When Purchasing The Pipeline, CFI Should Not Be Responsible.

It is not entirely clear why Kaneb bid \$140 million for a pipeline with prescribed rates and Kaneb's refusal to respond to discovery impedes the Board's ability to make it clear.

²³ See, also, *In re Falcon Cable Sys.*, 13 F.C.C.R. 4425, at ¶ 10 (1998) (discussing presumption that "excess acquisition costs" are excluded from rate base); *Re California Water Service Co.*, 53 CPUC 2d 287 (1994).

However, an examination of Kaneb's data in its September 13th Filing may give some clues: Specifically, Kaneb may have misjudged the pipeline's future costs and volumes. In particular, it appears from Kaneb's data that a major factor in the decline in returns for the pipeline (other than using acquisition cost to set the investment base) is the decline in volumes on the pipeline.

CFI should not be liable for Kaneb's miscalculation of volumes when purchasing the pipeline. As Kaneb's filing indicates, volumes have decreased. Verified Statement of Robert McElroy at 2. Kaneb's stated explanations for the decline are that shippers are choosing alternate transportation modes; demand for anhydrous ammonia is declining; and certain anhydrous ammonia production facilities have ceased production. *Id.* Kaneb did not bother to show the magnitude of each factor.

As the Board has previously found, CFI does not have competitive alternatives from its Donaldsonville, Louisiana facility to almost every destination on the pipeline. Thus, competitive alternatives to pipeline origin/destination pairs are unlikely to be the cause of a significant portion of the decline in volumes. Likewise, the evolving demand for anhydrous ammonia is more likely attributable to the cyclical nature of the business and the health of the larger economy during this period than any permanent decrease in volumes.

Instead, the major cause of the decline in volumes is the closure of two major ammonia production facilities. Kaneb should have known about the imminent closure of these production facilities before it purchased the pipeline because their potential closures were reported in the trade press more than six months prior to Kaneb's acquisition. *See* Exhibit A, Verified Statement of Fred A. Mugica. Moreover, it would not be surprising if Koch's prospectus for the sale of the pipeline mentioned their imminent closures, especially since one of the facilities was owned by Koch. To the extent that Kaneb miscalculated the future volumes on the system, it

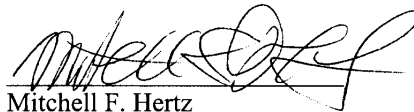
should assume the liability for its poor diligence and not be allowed to shift the risks of its investment decisions to CFI.

CONCLUSION

Kaneb has not justified lifting the rate prescription. Its arguments for using acquisition costs to review revenue adequacy ignore Board precedent, would harm captive customers, and would reward imprudent investments. Kaneb should not be permitted to shift to captive customers the risk of its imprudent investment decisions, and instead the Board should require Kaneb to assume liability for its decisions and retain the prescribed rates. If any change to the rate prescription is appropriate, the evidence suggests it should be lowered.

Respectfully submitted,

CF Industries, Inc.



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Counsel for **CF Industries, Inc.**

Dated: October 7, 2004

EXHIBIT A

**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

VERIFIED STATEMENT OF FRED A. MUGICA

My name is Fred. A. Mugica. I am Vice President of Supply and Logistics of CF Industries, Inc. ("CF Industries"). CF Industries is an interregional cooperative that is owned by eight regional farm cooperatives. It serves the needs of these regional cooperatives (and more than 1,000,000 of their farmer-members) through the manufacture, distribution, and sale of various forms of fertilizer. CF Industries maintains its corporate headquarters at One Salem Lake Drive, Long Grove, Illinois 60047. As Vice President of Supply and Logistics, I am responsible for directing all aspects of the Company's supply, distribution, and logistics activities, including the utilization of the Kaneb Ammonia Pipeline.

The purpose of this verified statement is to provide the Surface Transportation Board with information about trends in the anhydrous ammonia industry, and, in particular, how those trends may have impacted the Kaneb Pipe Line Operating Partnership, L.P.'s ("Kaneb") acquisition of the anhydrous ammonia pipeline.

In its September 13th Filing, Kaneb submitted the Verified Statement of Robert A. McElroy, Jr., which showed declining volumes from 1998 through 2003. Kaneb should have been aware of this trend when it purchased the pipeline and accounted for it in its bid because, in 2002, the trade press was widely reporting that a number of the producers using the pipeline were idling their plants and not producing ammonia.

For example, the January 21, 2002 edition of Green Markets (the industry's trade weekly) reported on its front page that Farmland Industries Inc.'s ("Farmland") Pollock, Louisiana ammonia plant, which had been using the pipeline, was idle. The March 4, 2002 Green Markets report noted that "most players are betting that Farmland will eventually opt not to renew its lease with G.E. regarding the Pollock, La., plant. The lease is up in March. Farmland has had the plant down for most of the past year." The April 1, 2002 Green Market report stated that Farmland was reducing its workforce at the Pollock plant, and that the plant had been idle since October 2001. It also noted that the plant could produce 1,500 st/d of anhydrous ammonia. The July 22, 2002 Green Market report states that Farmland has accrued \$4.6 million in closure costs for its Lawrence, Kansas and Pollock, Louisiana plants.

The March 11 and 18, 2002 Green Markets reports stated that one of Koch's Sterlington plants was also down. The April 1, 2002 Green Markets report claimed that Koch "has opted to keep its number one anhydrous ammonia unit at Sterlington, La., down for the remainder of the year. . . . The unit produces approximately 45,000 st per month." On April 8, 2002, Green Markets again reported that Koch was shutting down its number one Sterlington, Louisiana ammonia unit for the year. Copies of these Green Market reports are attached to this verified statement.

Farmland and Koch are two large shippers on Kaneb pipeline. From the public trade press alone, Kaneb should have known that the future prospect for two of its major injectors, Pollock and Sterlington, was uncertain at best. Kaneb should have been aware when it purchased the pipeline in September of 2002 of the serious challenges facing anhydrous ammonia producers and shippers, and the declining volumes being shipped on the pipeline. While the volumes may increase again in the future if the market conditions improve, Kaneb should not have automatically assumed that volumes would remain at their 1998 levels for the near term, and it should have accounted for these reduced volumes when submitting a bid for the pipeline.

GREEN MARKETS

FERTILIZER MARKET INTELLIGENCE WEEKLY

Prices • Politics • Economics • Transportation

Farmland's Crop Production posts \$42 million loss

Farmland Industries Inc.'s Crop Production segment reported a loss of \$42 million for the first quarter ending Nov. 30, 2001, compared to year-ago income of \$1 million. The Crop Production losses helped pull down Farmland's total net earnings to \$3.2 million from the year-ago \$6.7 million. Farmland said the Crop Production results were primarily due to a relatively high cost of inventory in comparison to lower selling prices for nitrogen fertilizer.

Crop Production sales were actually up for the quarter at \$166.8 million, versus the year-ago \$157.2 million. Farmland said unit sales volumes increased 21 percent, while unit selling prices decreased 14 percent. The average price of natural gas for the first quarter was \$2.87/mmBtu as compared to the year-ago \$4.82/mmBtu, which translated to a decreased cost of producing anhydrous ammonia of approximately \$66 per ton.

Despite the recent quarter, Farmland remains optimistic about fertilizer market conditions and looks for improvements industrywide. "Going into the second quarter, inventory costs have been reduced and the cost of production should continue to reflect lower natural gas prices," said Robert Honse, Farmland president and CEO. "We also expect additional acres of feed grain production to drive increased demand in the spring season. China's accession to the WTO, which Farmland worked hard to achieve, will increase demand for phosphate fertilizers."

Farmland recently placed its Lawrence, Kan., nitrogen plant on standby operational status (GM Jan. 14, p. 1). Its Pollock, La., ammonia plant remains idled.

see Farmland, page 12

January 21, 2002
VOLUME 26, NUMBER 3

INSIDE

2 Tampa NH₃
holds at \$114/mt

2-6 NOLA, international
urca weaken

7 Phosphates firm

10 Cargill earnings up

10 WMC touts
fertilizer performance

11 One dead after
train derailment

Farmland, from page 1

Farmland's total first-quarter sales were \$2.3 billion, down from the year-ago \$3 billion. The sales decline is attributed to grain sales being transferred to ADM/Farmland Inc., a grain marketing partnership formed last year with Archer Daniels Midland Co. Also contributing to the sales decline were reduced sales in Tradigrain, the company's international grain trading subsidiary.

Farmland's Refrigerated Foods segment had a significantly improved quarter, showing gains in both sales and income. Petroleum earnings were also up, with strong refining margins in September, combined with a \$18 million one-time gain resulting from the sale of Farmland's ownership interest in Country Energy, a petroleum marketing joint venture, to Cenex Harvest States Cooperative.

Farmland Segment Income (Loss)		
(000)		
	<i>Qtr and</i>	<i>Qtr end</i>
	<i>Nov. 30, 2001</i>	<i>Nov. 30, 2000</i>
Crop Production	(42,061)	1,093
Petroleum	35,237	3,651
Feed	614	1,444
Refrigerated Food	21,504	15,214
World Grain	(4,330)	3,573
Other	7,227	(1,571)
Total	18,191	23,404
Other Corp. Income/ (Expense) and Taxes	(14,942)	(16,691)
Net Income	3,249	6,713

Market Watch

AMMONIA

U.S. Gulf: There have been no new trades in the NOLA market, with most players noting that any new business would likely have to fall in line with recent Gulf Coast \$116/st FOB. However, others said higher natural gas prices, trading up in the \$2.40s/mmBtu last week, would perhaps prompt some producers to ponder throttling back of domestic production.

In the meantime, most players are betting that Farmland will eventually opt not to renew its lease with G.E. regarding the Pollock, La., plant. The lease is up in March. Farmland has had the plant down for most of the past year.

Another market factor last week was news that FertiNitro had taken down one ammonia and one urea unit for mechanical reasons. It was unclear last week how long they would be down, although there were unconfirmed reports that it could be as long as 45 days.

Market Watch

AMMONIA

U.S. Gulf: There were reports of new barge business last week, but sources were shy about putting a price tag on it. There was much speculation that the new number would come in at the \$116/st FOB mark, which was the most recent Gulf Coast number. One major buyer was conducting an electronic auction for barge and vessel quantity material as *Green Markets* went to press.

Koch took down its Sterlington number one plant the week of Mar. 4 for repairs, and it is expected to be down a few more weeks for maintenance. Despite industry rumors, the number two plant continues to operate. At FertiNitro, one ammonia and urea plant are down and are expected to come back up in

Market Watch

AMMONIA

U.S. Gulf: Most Gulf players were conceding a downward trend in the NOLA barge market last week, even though an uptick in natural gas prices was giving some concerns. Generally, the market was put within the \$114-\$116/st FOB range, which sources said was based on the results of DuPont's recent electronic tender. Others noted that \$116/st FOB had been achieved earlier from another Gulf port.

Miss Chem's Ampco plant was down last week due to mechanical problems and was not expected back up until the middle of the week of Mar. 18. One of Koch's Sterlington plants was also reported to still be down for work.

March 18, 2002 • GREEN MARKETS

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News Briefs

Koch opts to keep Sterlington unit down

Wichita—Koch Nitrogen has opted to keep its number one anhydrous ammonia unit at Sterlington, La., down for the remainder of the year. Higher natural gas prices have been cited for the move. The unit produces approximately 45,000 st per month. Koch plans to keep its number two unit up for the year. To compensate for the outage, Koch has bought Caribbean tons for the near term, and has inked a contract to buy 300,000-350,000 tons of product from the FSU for the rest of the year. In the meantime, FertiNitro in Venezuela, in which Koch owns a stake, is currently at full production, with unit one just having come up from a turnaround. FertiNitro is still mulling over whether to take the number two unit down for a turnaround or do so at a later date, as originally planned.

Farmland reduces Pollock workforce

Kansas City—Farmland Industries Inc. said Mar. 27 that it is reducing its workforce at its Pollock, La., ammonia plant, effective April 1. The plant has been idled since October 2001 due to adverse market conditions. Twenty-eight of the plant's 43 employees will be placed on layoff status and become eligible for the company's severance program. Farmland began production at Pollock in 1977. At capacity, the facility can produce 1,500 st/d of anhydrous ammonia. After the October idling, employees remained at the site as part of a facility lease agreement, which expired March 17, 2002. Approximately 15 people will remain at the Pollock site after April 1, to manage the facility and continue safety and environmental programs. Farmland is engaged in ongoing discussions on future options for the plant. Farmland continues to operate nitrogen plants in Beatrice, Neb.; Fort Dodge, Iowa; Coffeyville, Kan.; Enid, Okla.; and Dodge City, Kan.; as well as in Trinidad in a joint venture with Mississippi Chemical Corp. Farmland's Lawrence, Kan., plant was placed on standby status earlier this year.

Green Markets

FERTILIZER MARKET INTELLIGENCE WEEKLY

Prices • Politics • Economics • Transportation

April 8, 2002
VOLUME 26, NUMBER 14

INSIDE

6 Terra posts new UAN prices

8 IMC Global issues revised
potash list

8 Sulfur players continue
negotiations

8 Australia raises red flag on
phosphate imports

9-10 Royster-Clark, CF report
2001 results

9 Senator presses China on TRQs

10 IMC to be challenged
on mine permit

10 Lesco reports management
changes

PCS idles Geismar NH₃ and UAN production

Potash Corp. of Saskatchewan Inc. said April 4 that it was immediately idling all production of anhydrous ammonia and UAN at its Geismar, La., nitrogen complex, due to high natural gas prices and low nitrogen prices. PCS will continue to produce nitric acid at Geismar using ammonia inventories or purchased ammonia. Geismar annual capacities are 483,000 mt of ammonia, 1 million mt of UAN, and 844,000 mt of nitric acid.

PCS had cut UAN production March 22 at Geismar by 25 percent. The same day it also cut ammonia production by 20 percent at Geismar, Lima, Ohio, and Augusta, Ga.

Mississippi Chemical Corp. took down its number four ammonia plant at Yazoo City, Miss., near the end of March due to market conditions. The plant produces 500/ st per day and is Miss Chem's smaller plant at the complex. Miss Chem expects the outage will impact all upgraded nitrogen products, with UAN seeing the most impact. In the meantime, Miss Chem's Ampro plant at Donaldsonville remains down. It was taken down initially due to catalyst problems which are almost repaired.

see PCS, page 11

PCS, from page 1

However, the company said a decision to return that plant to production will be based on market conditions.

Koch Nitrogen recently opted to keep its number one Sterlington, La., ammonia unit down for the remainder of the year.

Strengthening natural gas prices continue to prompt speculation that additional U.S. nitrogen production will be idled as the industry enters the spring season. It comes at an ironic time when nitrogen demand should be at full throttle and new imports would be too late to make up for any shortfall.

Most analysts said gas was simply following a surge in oil prices which are being boosted by growing tension in the Middle East. While NYMEX Henry Hub gas was settled at \$3.65/mmBtu April 2, gas cash sales were reported to be moving toward and beyond the \$4.00/mmBtu mark in some regions of the country. However, on April 3, gas prices started to let up some, but were still at stiff levels for the industry.

While sellers are hoping that there will be an uptick in nitrogen pricing, buyers last week were skeptical that seller predictions of logistic snafus and intense demand, will pan out in the end. Terra Industries Inc. said its recent survey of corn growers in 13 states shows they intend to plant about 2.5 percent more corn in 2002 than in 2001. "While many events could occur that might change the surveyed corn growers' intentions, we are pleased that our survey results parallel forecasts made by various crop analysts," said Michael Bennett, Terra president and CEO. Bennett has USDA's own four percent expectations in corn acres to back him up (GM April 1, p. 8).

One of those events that could occur is the weather, and some last week pointed to wetter than normal weather in some areas of the mid-South, saying that corn planting is behind schedule, opening the door to more soybean planting—and less fertilizer use—in that area.

A Pike & Fischer Publication

Green Markets

FERTILIZER MARKET INTELLIGENCE WEEKLY

Prices • Politics • Economics • Transportation

July 22, 2002
VOLUME 26, NUMBER 29

INSIDE

6 Phosphate prices move up

6 IMC loses 100,000 st
of DAP/MAP production

7 Cargill finalizes purchase
of Mulberry plant

8 Titan, shuttle delays take
pressure off Vicksburg

9 Capacity crowd
hears Fertile Minds

Farmland reports 3Q loss of \$189.5 million; cooperative moves to buy two Enid NH3 plants

Farmland Industries reported a net loss of \$189.5 million for its fiscal third quarter ended May 31, 2002, on total sales of \$1.6 billion. The loss included \$127.5 million in pre-tax restructuring and reorganization charges and losses from discontinued operations. In the year-ago quarter, Farmland had a net loss of \$42.4 million, including pre-tax restructuring charges and losses from discontinued operations of \$87.4 million, on sales of \$2.57 billion. Farmland filed for Chapter 11 bankruptcy protection May 31.

The \$127.5 million charges primarily represent impairment of certain company assets from events that occurred during the third quarter. The charges reflect the shutdown of manufacturing operations at two fertilizer plants--Lawrence, Kan., and Pollock, La.; a decision to sell its interest in Farmland Hydro LP, which operates a phosphate fertilizer operation in Florida; the previously announced closure of International grain trading operations; and the recognition of deferred finance costs for the company's pre-filing financing.

see Farmland, pages 10/11

Farmland, from page 1

Operating losses were \$91 million for the quarter and were attributed to a depressed fertilizer manufacturing industry, lower petroleum margins and maintenance on its refinery in Coffeyville, Kan., and tighter margins in the beef business. In the year-ago quarter, Farmland had operating income of \$35.9 million.

Farmland had a net loss of \$236 million on sales of \$5 billion for the first nine months, compared to a year-ago loss of only \$37 million on sales of \$7.3 billion.

Crop Production 3Q losses \$86.7 million

The Crop Production segment had a third-quarter net loss of \$86.7 million on net sales of \$181.6 million, compared to the year-ago \$3.9 million loss on sales of \$296.7 million. Nine-month losses were \$164.7 million on sales of \$469.4 million versus the year-ago \$5.9 million loss and \$635.9 million in sales.

Crop Production

	3Q-02	3Q-01	9M-02	9M-01
Net Sales	181.6	296.7	469.4	635.9
Operating Loss	(31.5)	(3.9)	(109.5)	(5.9)
Net Loss	(86.7)	(3.9)	(164.7)	(5.9)

Farmland says that in recent years, Crop Production has suffered from a combination of high natural gas prices and competition from imports. In addition, earlier this year, it said nitrogen use was down for wheat application due to drought conditions in Oklahoma and Texas, while it was off for corn use in wet Illinois and Indiana.

During June 2002, all plants, except Dodge City and Coffeyville, Kan., were temporarily idled. Production resumed at Beatrice, Neb., Fort Dodge, Iowa, and part of Enid, Okla. July 1. Farmland plans to resume production at the remaining ammonia plant at Enid in September. Farmland has made the decision to maintain Lawrence as a terminal for the foreseeable future. Farmland has accrued \$4.6 million as an estimate for closure costs of the Lawrence, Kan., and Pollock, La., plants.

Farmland revealed that it expects to spend over \$15 million at its Coffeyville refinery in order to satisfy the Environmental Protection Agency. Due to a violation in early 2002, Farmland expects eventual EPA fines of over \$100,000.

Farmland seeks to purchase Enid NH3 plants

Farmland is asking the bankruptcy court to approve its purchase of the two ammonia plants at Enid for \$25.5 million. Combined, the two plants have a combined capacity of over one million st/y. Farmland has had a lease-purchase agreement at the facility, with the term slated to expire in September 2003. Farmland was originally to exercise the option by June 30, 2002, but that date has been extended to July 30, 2002. The lease payments are made quarterly at \$2,178,000. Farmland is current on post-bankruptcy lease payments, but still owes \$1.6 million plus nine percent interest under its pre-petition obligations.

Farmland says the two plants are important to its manufacturing activities and are its most efficient plants in North America, operating at 33 mmBtu of natural gas, with an onstream factor of 98 percent. Their original cost was \$72.8 million. Farmland says the facility is the second largest in North America and provides significant economies of scale. It is one of the only plants in North America that can serve the corn and wheat market of the Midwest or the industrial market of the Gulf Coast. The plant provides feedstock for adjacent UAN and urea plants owned by Farmland. Their loss would impact the value of other plants as well. Farmland says it has received expressions of interest from buyers for smaller facilities at prices far in excess of the option price. Farmland said the price is far below the fair market value and that the court must act on the matter as the lessor is unwilling to extend the option beyond July 30, 2002.

GREEN MARKETS • July 22, 2002

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VERIFICATION

State of Illinois)
) ss:
County of Lake)

Fred Mugica, being duly sworn, deposes and says that he has read the foregoing Affidavit, knows the contents thereof, and that the facts stated therein are true and correct to the best of his knowledge, information, and belief.

F. A. Mugica
F. A. Mugica

Subscribed and sworn to before me

This 5th day of October , 2004.

Helen A. Conrad
Notary Public

My Commission expires 6-26-2006.



EXHIBIT B

CF INDUSTRIES, INC.,
Complainant

v.

KANEB PIPE LINE PARTNERS, L.P.,

and

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

My name is Thomas W. Carlton. I am Manager, Corporate Business Analysis for CF Industries, Inc. ("CF Industries"). CF Industries is an interregional cooperative that is owned by eight regional farm cooperatives. It serves the needs of these regional cooperatives (and more than 1,000,000 of their farmer-members) through the manufacture, distribution, and sale of various forms of fertilizer. CF Industries maintains its corporate headquarters at One Salem Lake Drive, Long Grove, Illinois 60047. I am responsible for performing evaluations of strategic business alternatives by providing management with conceptual, quantitative, and qualitative analyses of those alternatives. Typical activities include evaluations of major capital expenditures, production alternatives, or major business transactions.

The purpose of this verified statement is to demonstrate that Kaneb would be revenue adequate if the Surface Transportation Board (“Board”) were to use predecessor investment costs when reviewing Kaneb’s revenue adequacy. The chart below illustrates that Kaneb’s Return on

Investment exceeds the Cost of Capital for 2002 and 2003 when using predecessor investment costs to review revenue adequacy:

Year	Return on Investment (%) -- end of year	Return on Investment (%) -- average	Cost of Capital (%) ¹	Revenue Adequate
1988	10.5		11.7	No
1989	14.5	14.4	11.5	Yes
1990	14.9	14.6	11.8	Yes
1991	13.1	12.9	11.6	Yes
1992	16.6	16.7	11.4	Yes
1993	11.8	11.8	11.4	Yes
1994	17.8	17.1	12.2	Yes
1995	16.1	15.7	11.7	Yes
1996	19.8	19.5	11.8	Yes
1997	20.7	20.3		
1998	21.8	21.4		
1999	21.7	21.3		
2000	19.5	19.1		
2001	13.7	13.3		
2002	20.5	19.9	9.4	Yes
2003	16.8	16.8	9.4	Yes

I began my analysis by reviewing the Board's May 3, 2000 decision in *CF Industries, Inc. v. Koch Pipeline Co., L.P.*, STB Docket No. 41685 ("*Prescription Order*"). Where possible, I used the *Prescription Order*'s Appendix 11 information for the years 1988 through 1996. In addition, where possible I used figures provided in Kaneb's September 13, 2004 filing. Finally, I had to make certain assumptions, which I will discuss below.

For each year from 1988 through 2003, I calculated two Return on Investment figures. The first was a Return on Investment using year-end Net Investment numbers. The second was a Return on Investment using the average Net Investment over the course of the year. I calculated the second Return on Investment because the Board used an average figure in the *Prescription Order*.

¹ Cost of Capital for years 1988-1996 come from Appendix 11, Table 5 of the *Prescription Order*; Cost of Capital for years 2002 and 2003 are from Kaneb's filing. See Verified Statement of Robert G. Van Hoecke at 7.

I calculated the Return on Investment as follows. Return on Investment is the Net Income divided by Net Investment. To calculate Net Income, I began with Revenues and subtracted Cash Expenditures. This gives the EBITDA, or Earnings Before Interest, Tax, Depreciation, and Amortization. I then subtracted Taxes to get After Tax Cash Flow. From this, I subtracted Depreciation, Depletion, and Amortization (“DD&A”) to arrive at the Net Income.

I then calculated Net Investment. I took the Gross Investment figure – using the 1988 data provided in Appendix 11 – and added in Capital Expenditures each year. I then subtracted Accumulated DD&A to arrive at the Net Investment in the pipeline each year. I calculated Return on Investment by dividing Net Income by Net Investment. For the Return on Investment reflecting the end-of-year-data, I used end-of-the-year Net Investment; for the Return on Investment reflecting the average Net Investment in a year, I used the year’s average Net Investment.

To calculate Net Income and Net Investment since 1988, I had to make several assumptions. For Revenues, I used Appendix 11’s figures for 1988 through 1996. I estimated Revenues for the years 1997 and 1998. To get the estimate, I took Kaneb’s figures for volumes,² assumed that the Revenue per Ton in 1997 and 1998 was equal to the average Revenue per Ton for the years 1999-2003, and calculated an estimated Revenue by multiplying the volumes by the Revenue per Ton. While I provided this estimate for completeness, it does not impact the analysis for the years that Kaneb owned the pipeline. For years 1999 through 2003, I used the Revenue figures reported by Kaneb.³ For 2003, I used the Revenue figure that was adjusted to

² See Verified Statement of Robert A. McElroy, Jr. at 2.
³ See Verified Statement of Joseph Graham at 7.

reflect the refunds owed to CF Industries, like Mr. Graham and Mr. Van Hoecke did in their statements.⁴

For Cash Expenditures, I used Appendix 11 data for years 1988 through 1996. Kaneb's filing states that its 2003 Cash Expenditures totaled \$9.6 million, so I used this figure for 2003.⁵ For the interim years, 1996 through 2003, I estimated the Cash Expenditures by assuming a ratio between Revenues and Cash Expenditures and multiplying that ratio by Revenue. Because we could calculate this ratio for 1996 and 2003, I assumed that the levels trended up at an even pace each year from 1996 to 2003. This should give a rough approximation of Cash Expenditures during this period. As a check on the use of the Cash Expenditures to Revenues Ratio as a basis for calculating Cash Expenditures, I calculated the Cash Expenditures per Ton as the Cash Expenditures divided by Tons. As expected, the Cash Expenditures per Ton also increases relatively smoothly from 1996 to 2003. Once again, this data is provided for completeness and does not impact the analysis for the years that Kaneb owned the pipeline.

As noted, EBITDA is Revenues minus Cash Expenditures. Next I subtracted Taxes from EBITDA. In his Verified Statement, Kaneb's Joseph Graham included property taxes, but no income taxes, when calculating operating income.⁶ A review of Exhibit No. JG-1 shows that the property taxes are already included in Kaneb's \$9.6 million Cash Expenditures for 2003. Since the property taxes were already included in Kaneb's figure for Cash Expenditures, I did not include them in the Tax column so as to avoid double counting the property tax. In Robert G. Van Hoecke's Verified Statement, he states that Kaneb's operating expenses do not include

⁴ See Verified Statement of Joseph Graham, Exhibit No. JG-1, Page 2 of 3. In his statement, Mr. Graham reports a 2003 Revenue of \$21.3 million. In his exhibit, Mr. Graham adjusts that to \$20.962 million. I used Mr. Graham's exhibit figure.

⁵ See Kaneb Pipe Line Partners, L.P.'s and Kaneb Pipe Line Operating Partnership, L.P.'s Opening Evidence and Argument ("Kaneb Filing") at 17. See also Verified Statement of Joseph Graham, Exhibit No. JG-1, Page 2 of 3 (the expenses, not including depreciation/amortization, equal \$9.6 million for 2003).

⁶ See Exhibit No. JG-1, Page 2 of 3.

income tax expenses because Kaneb is organized as a partnership, which is not subject to income taxation.⁷ Thus, in accordance with Kaneb's filing, Taxes for 2002 and 2003 are assumed to be \$0. For years 1988-1996 I used actual tax figures from Appendix 11 of the *Prescription Order* (Koch had to pay taxes). For the other years, I assumed a tax rate of 40%. 40% is the figure that CF Industries typically uses in-house as a proxy for combined state and federal taxes.⁸ Once again, these intervening years do not impact Kaneb's ownership period.

After subtracting Taxes, I arrived at an After Taxes Cash Flow. From this, I subtracted DD&A to arrive at the Net Income. Kaneb has not provided figures for DD&A and therefore I had to make certain assumptions. Because I had After Tax Cash Flow and Net Income from Appendix 11 for the years 1988 through 1996, I was able to calculate the DD&A for each year during this period. The 1988 data reflects only part of the year, since the owner of the pipeline at the time, Koch, bought the pipeline in the middle of the year. Therefore, I averaged 1989-1996 DD&A to calculate 1997's DD&A. I then increased that figure annually by 1.5% for 1998-2003. The DD&A figures for 1988-1996 fluctuate more than one would typically expect, and I cannot account for this since I am using the Board's own data from Appendix 11, however, the DD&A is a reasonable approximation absent an opportunity to conduct discovery on this issue.

To calculate Net Investment, I began with Appendix 11's Gross Investment for 1988. I then added in Capital Additions to get the next year's Gross Investment. For 1989 through 1994, I used Appendix 11's figures for Capital Additions. For 1995 through 2002, I assumed Capital Additions to be equal to the average for 1989 through 1994. The \$1.1 million estimate is

⁷ See Verified Statement of Robert G. Van Hoecke at 5.

⁸ Even if the Board were to re-run the calculations using a 40% estimate for taxes in 2002 and 2003, Kaneb would still be revenue adequate in these years, but the Return on Investment would be smaller. This illustrates two facts. First, that even using conservative assumptions, Kaneb is still revenue adequate. Second, Kaneb's partnership structure provides significant benefits that Koch, Kaneb's predecessor, did not have. This should be taken into consideration in the Board's decision.

reasonable: Kaneb estimates that its 2004 Capital Expenditures will be about \$1.25 million, which is likely higher than Koch spent on Capital Expenditures from 1995 through 2002. For 2003, I used Kaneb's actual figure.⁹ The next step in the calculation was to subtract the Accumulated DD&A, which is a running sum of the DD&A discussed above. Subtracting Accumulated DD&A gives Net Investment. I calculated two Net Investment figures – a year-end figure and the average Net Investment over the course of the year. I calculated the latter because the Board used an average Net Investment analysis in the *Prescription Order* and I wanted to allow for similar comparisons.

The Board will note that the Return on Investment for years 1988 through 1996 are very close to, but not exactly the same as, the figures reported in Appendix 11. This is probably due to (i) my use of rounded numbers in the spreadsheet and (ii) the Board's use of a half-year discount factor for the Capital Additions to get the average Net Investment a year (whereas I averaged the end-of-year Net Investment for the prior and current year to get an average Net Investment figure). These are not material differences, and I needed to use a consistent method for the entire period (1988 through 2003).

As noted, I used Kaneb's figures where possible. By using their figures, I am not vouching for their accuracy, but instead giving Kaneb the benefit of the doubt in this analysis. Using the figures and assumptions described above, my calculations show that Kaneb would be earning substantially in excess of the revenue adequate levels if using predecessor investment costs in the review. My calculations and worksheets are included as Exhibit No. TC-1.

⁹ See Verified Statement of Joseph Graham at 6.

Kaneb Ammonia Pipeline Calculation of Revenue Adequacy assuming Koch basis taken over by Kaneb, which does not pay taxes as a Partnership														Exhibit No. TC-1		
Year	Volume 000 Tons	Revenue	Cash Exp.	EBITDA	Taxes	AT CF	DD&A Annual Incr	Tax Rate	DD&A Annual Incr	Acc DDA	Gross Invest	Capital	ROI based on Ending Net Investment	ROI based on Average Net Investment	ROI based on Average Net Investment	Exp/Ton
1988		13,345		13,345		9,680	1,765			1,765	75,386		10.5%			
1989		18,039		18,039			3,359			5,344	74,343		14.5%			
1990		17,742		17,742			2,415			7,759	71,275		14.9%			
1991		17,952		17,952			2,877			10,636	69,204		13.1%			
1992		22,093		22,093			3,284			13,920	70,326		16.6%			
1993		17,251		17,251			3,445			17,365	70,326		11.8%			
1994		22,094		22,094			2,589			19,954	65,020		17.8%			
1995		19,574		19,574			5,268			25,222	61,823		16.1%			
1996		22,690		22,690			3,063			28,285	59,857		19.8%			
1997	1870	34,631	11,428	23,203	7,956	15,247				31,598	57,641		20.7%			
1998	1950	36,113	12,639	23,473	8,044	15,429	3,362			34,960	55,376		21.8%			
1999	1750	35,900	13,283	22,617	7,682	14,935	3,413			38,372	53,060		21.7%			
2000	1670	32,700	12,753	19,947	6,593	13,354	3,464			41,836	50,693		19.5%			
2001	1400	24,600	10,086	14,514	4,399	10,115	3,516			45,352	48,274		13.7%			
2002	1300	22,700	9,761	12,939	-	12,939	3,569			48,920	45,802		20.5%			
2003	1200	20,962	9,600	11,362	-	11,362	3,622			52,542	46,083	2,500	16.8%			
From Kaneb Opening Evidence and Argument																
33 level.																
Calculations																
Revenue in 1997 and 1998 is volume times revenue per ton																
Cash expenses in 1997-2007 is revenue times exp/revenue ratio																
EBITDA is revenue less cash expenses																
Taxes in 1997-2001 is tax rate times EBITDA less DD&A																
No taxes for 2002 and 2003 because Kaneb is a Partnership and does not pay taxes.																
DD&A in 1998-1996 is after tax cash flow less Net Income (note that the calculated DD&A is not uniform year to year)																
Gross investment for 1989 to 2003 is last year gross investment plus capital																
Accumulated DD&A is previous year plus DD&A																
Net Investment is Gross Investment less Accumulated DD&A																
ROI is Net Income divided by Net Investment																
Revenue/Ton in 1999-2003 is revenue divided by NH3 Volume																
Exp/Revenue for 1998-1996 and 2003 is Cash Expenses divided by Revenue																
Note: Average tax rate for 1989-1996 calculated as sum(taxes)/(sum(EBITDA)-sum(DD&A)) was 36%. 40% was used for 1997-2001 as a conservative assumption.																

VERIFICATION

State of Illinois)
) ss:
County of Lake)

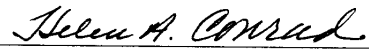
Tom W. Carlton, being duly sworn, deposes and says that he has read the foregoing Affidavit, knows the contents thereof, and that the facts stated therein are true and correct to the best of his knowledge, information, and belief.



Tom W. Carlton

Subscribed and sworn to before me

This 5th day of October, 2004.



Notary Public

My Commission expires 6-26-06.



EXHIBIT C

**VanNess
Feldman**
ATTORNEYS AT LAW

EXHIBIT C

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Kathrine L. Henry
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October 1, 2004

VIA HAND DELIVERY

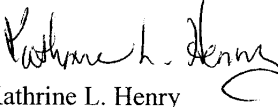
Mitchell F. Hertz
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

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.*

See General Objection above.

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

See General Objection above.

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.*

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

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.*

See General Objection above.

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."*

See General Objection above.

18. *Reference: McElroy VS at 2: Identify the steps Kaneb intends to take to increase volumes on the Pipeline.*

See General Objection above.

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.*

See General Objection above.

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.*

See General Objection above.

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.

2. Provide all business plans relating to the Pipeline.

See General Objection above.

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

See General Objection above.

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

See General Objection above.

5. Provide all future construction budgets for the Pipeline.

See General Objection above.

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

See General Objection above.

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

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

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See General Objection above.

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.

12. *Reference: Doherty VS at 3: Provide all documents relating to the basis for Kaneb increasing its "final bid" of \$125 million to the \$140 million purchase price.*

See General Objection above.

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

See General Objection above.

14. *Reference: Doherty VS at 3: Provide 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."*

See General Objection above.

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

See General Objection above.

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

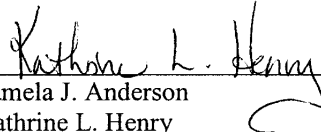
See General Objection above.

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.



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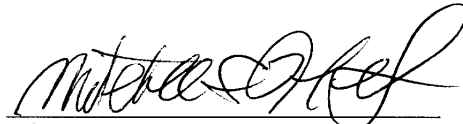
Counsel for
Kaneb Pipe Line Partners, L.P. and Kaneb Pipe
Line Operating Partnership, L.C.

Dated: October 1, 2004

CERTIFICATE OF SERVICE

I certify that I have this day served copies of CF Industries, Inc.'s Response to Kaneb's Opening Evidence and Argument on all parties in this proceeding by hand delivery.

Dated at Washington, DC, this 7th day of October, 2004.



Mitchell F. Hertz