

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

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

**REPLY OF KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
IN OPPOSITION TO THE MOTION OF CF INDUSTRIES, INC.
FOR APPOINTMENT OF A MEDIATOR**

KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING
PARTNERSHIP, L.P.
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LINE OPERATING PARTNERSHIP, L.P.

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Pursuant to the section 1104.13 of the Board’s regulations, Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, “Kaneb”) hereby submit their Reply in Opposition to the November 10, 2004 Motion of CF Industries, Inc. (“CFI”) for Appointment of a Mediator in this proceeding.

CFI cites no case law, policy or regulations in support of its request that the Board appoint a mediator to “facilitate a negotiated settlement to this dispute.”¹ Assuming CFI’s request is grounded in part 1109 of the Board’s regulations,² which requires that all

¹ CFI Motion at 1.

² Because CFI seeks mediation, rather than arbitration, and has not followed Board procedures for arbitration set forth at part 1108 of the Board’s regulations, Kaneb assumes that CFI seeks to mediate under part 1109 of the Board’s regulations.

parties indicate their written consent for alternative dispute resolution treatment,³ the Board should deny CFI's motion, because, for the following reasons, Kaneb does not consent to the appointment of a mediator or to the use of alternative dispute resolution to resolve this litigation.

First, mediation between the parties will not assist the Board in deciding the one issue remaining in this dispute: whether the Board should lift the rate prescription it imposed in CF Industries, Inc. v. Koch Pipeline Company, L.P.⁴ in light of material changed circumstances on the anhydrous ammonia ("AA") pipeline at issue. In accordance with the Board's August 11 Decision in this proceeding,⁵ Kaneb has submitted evidence of materially changed circumstances on its AA pipeline demonstrating that the factual underpinnings of the Koch decision no longer have validity. CFI has not disputed this evidence. All of the requested evidence is now before the Board, and it is therefore unnecessary for the parties to undergo mediation in order for the Board to find that circumstances have materially changed since it imposed the Koch rate prescription. CFI has failed to demonstrate how mediation will assist the Board in resolving this issue.

Second, mediation would further delay resolution of this litigation. Kaneb's request that the Board lift the existing rate prescription has been pending for more than a year. Although CFI claims that "prompt resolution of this dispute is in both parties'

³ 49 C.F.R. § 1109.1 (2003).

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

⁵ CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P., STB Docket No. 42084 (STB served August 12, 2004) ("August 11 Decision").

interest,”⁶ mediation will only further delay the Board’s resolution of the one issue remaining in this dispute. In addition, mediation will result in a waste of the parties’ time, money and resources. The only way to ensure prompt resolution of this dispute is to allow the Board to reach a conclusion on the issue before it: whether circumstances have changed materially since the Board imposed the rate prescription in Koch.

Finally, the parties have already attempted to negotiate a settlement to this dispute, and those settlement discussions failed. Although Kaneb negotiated in good faith, it eventually became clear that the parties’ differences were not bridgeable, as CFI claims,⁷ and the parties were required to turn their attention back to the pending litigation. Kaneb believes that, at this point in the litigation, it is unlikely that the parties’ differences can be settled. CFI has failed to demonstrate that mediation will cure those fundamental differences.

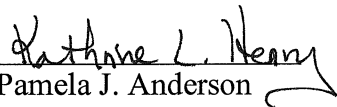
⁶ CFI Motion at 2. Contrary to CFI’s claimed interest in a prompt resolution of this dispute, the longer such resolution is delayed, the longer CFI is entitled to pay lower rates subject to the prescription.

⁷ CFI Motion at 2.

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

1. Deny CFI's Motion for Appointment of a Mediator;
2. Lift the prescription it imposed in CF Industries, Inc. v. Koch Pipeline Company, L.P. and restore ratemaking initiative to Kaneb; and
3. Grant Kaneb such additional relief as the Board deems proper.

Respectfully submitted,


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Dated: November 23, 2004

CERTIFICATE OF SERVICE

Pursuant to Rule 1104.12 of the Surface Transportation Board's Rule on Service of Pleadings and Papers, I hereby certify that I have this day served a copy of the foregoing document by hand delivery upon all parties of record in this proceeding.

Dated at Washington, D.C., this 23rd day of November 2004.


Kathrine L. Henry