

ORIGINAL

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May 4, 2005

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

Office of



BY HAND DELIVERY

Re: Docket Nos. 42084, CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. and 42081, Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.

Dear Mr. Secretary:

Pursuant to the Board's decision of April 6, 2005, Defendants Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb") hereby advise the Board that Albert S. Tabor, Jr., of Vinson & Elkins L.L.P., will appear on their behalf at the oral argument scheduled in the captioned proceeding for May 11, 2005. In accordance with Section 1104.3 of the Board's regulations, 49 C.F.R. § 1104.3, Kaneb has enclosed an original and ten copies of this filing.

If there is any issue on which the Board would like to receive argument that is not covered in this letter, Kaneb would welcome any guidance the Board may wish to provide.

Respectfully submitted,

Albert S. Tabor, Jr. by *HAUT*
Albert S. Tabor, Jr.

**Oral Argument Summary of Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line
Operating Partnership, L.P. – Docket Nos. 42081 and 42084**

CF Industries, Inc.

The matters at issue arise from the August 12 Order of the Surface Transportation Board ("Board").¹ The Board first held that Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb") cannot increase a prescribed rate until the Board vacates it and then described the evidence necessary to consider vacation of the prescription.

On September 12, 2004 Kaneb presented precisely the evidence sought by the Board. The evidence showed that (i) Kaneb acquired the assets for approximately \$140 million; (ii) the assets acquired by Kaneb are substantially the same assets that the Board examined in Koch;² (iii) the transaction was conducted at arm's length between companies with equal bargaining power; (iv) Kaneb has no affiliated shippers; and (v) Kaneb has incurred significant increases in operating costs and capital expenditures and significant decreases in volumes, revenues and return on investment since the acquisition. Neither CF Industries, Inc. ("CFI") nor Dyno Nobel Inc. ("Dyno") submitted any evidence disputing Kaneb's evidence.

The evidence shows that the circumstances have changed significantly since the imposition of the rate prescription. The Board should vacate the rate prescription and restore ratemaking initiative to the carrier.

The Board should rely on 17 years of precedent and adopt Kaneb's acquisition cost as its investment base. The Board should reject the suggestion that the investment base be set using the price that Koch Pipeline Company, L.P. ("Koch") paid Gulf Central Pipeline Company for

¹ CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P., 2004 STB LEXIS 506 (STB served August 12, 2004) ("August 12 Order").

² See CF Industries, Inc. v. Koch Pipeline Co., 4 S.T.B. 637 (2000) ("Koch"), aff'd sub nom., CF Industries, Inc. V. STB, 255 F.3D 816 (D.C. Cir. 2001).

these assets in 1988. In that same year, the ICC declared that it would henceforward use acquisition costs in valuing railroad investment bases.³ The ICC stated that acquisition cost represents the fair market value of an asset as established by the purchase price⁴ and found that the use of acquisition cost comports with generally accepted accounting principles and is consistent with the underlying objectives of a revenue adequacy analysis.⁵ The ICC further stated that because the acquisition cost reflects a new valuation base for the acquired asset, "it can be either higher or lower than the previously recorded value."⁶ Finally, the ICC noted that where assets are sold for more than book value, the use of predecessor cost "would potentially shortchange those recent investors who have paid a premium above the old book value with a return below the cost of capital for their investment."⁷ The Board's acquisition cost valuation policy has been judicially approved, and the Board applied it in the only pipeline case where it was at issue, Koch, where the Board noted that "acquisition cost valuation – the amount paid in an arms-length transaction – is consistent with 'what other business enterprises use for measuring their investments.'"⁸

The Board should also reject the argument Dyno suggests but never quite makes, that Hope⁹ prohibits the use of acquisition cost. Hope stands for the opposite – the proposition that the Board has broad discretion in determining what is reasonable.¹⁰

³ See Railroad Revenue Adequacy – 1988 Determination, STB Ex Parte No. 483, 6 I.C.C. 2d 933 (1990), 1990 ICC LEXIS 247, at *15 ("1988 Revenue Adequacy Determination"); affd, Assoc. of Am. Railroads v. ICC, 978 F.2d 737, 741 (D.C. Cir. 1992) (finding that the ICC made a rational choice between conflicting policy alternatives).

⁴ See id., n.3.

⁵ See id., at *15.

⁶ Id., at n.3.

⁷ Id., at *17.

⁸ Koch, at 656.

⁹ FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944) ("Hope").

¹⁰ Hope, 320 U.S. at 620.

The rates CFI is paying Kaneb today are precisely the same rates that CFI has been paying for this service since April 1987 – 18 years. Vacating the prescription will level the playing field and create an environment for fair negotiation between equals. Without a prescription, if Kaneb increased rates, CFI could complain and then the rates would be subject to reparations. Now Kaneb cannot increase rates. The harm Kaneb suffers is irreparable. CFI has every incentive to delay resolution. It also has enormous negotiating leverage.

The Board relies – and should rely – on acquisition cost. Kaneb is bleeding money. The Board promised prompt action. Please act without further delay.

Dyno Nobel Inc.

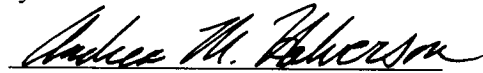
Dyno alleges two counts that were not addressed above. Count I is based on Dyno's allegation that there is a contract rate in place between it and Kaneb. The one and one-half page letter that Dyno cites is not a rate contract at all. It is a tolling agreement between Dyno and Koch to forestall the need for legal action between them during the pendency of the appeal of Koch. Once the appeal was final in the summer of 2001, the letter agreement ended.

Count II alleges unreasonable discrimination. First, it seems to allege that Koch agreed in the letter agreement to publish a tariff discriminating in favor of Dyno's Louisiana, Missouri ("LOMO") destination. There is no support for that allegation. This leaves Dyno with the sole basis that, once Koch (and later Kaneb) decided that market conditions justified lowering the rates to Dyno's LOMO destination and discriminating in favor of Dyno, Kaneb cannot later reassess market conditions and eliminate the discrimination as unnecessary. That would be bad law, bad economics and bad public policy. Law, economics and public policy all require that carriers be free to respond to their perception of market conditions.

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this document upon all parties of record in these proceedings by hand delivery.

Dated in Washington, D.C this 4th day of May 2005.

A handwritten signature in black ink, reading "Andrea M. Halverson", is written over a horizontal line.

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