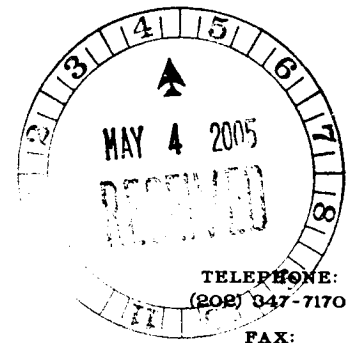


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21392-6
May 4, 2005

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Re: Docket No. 42081, *Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P., et al.*

Dear Secretary Williams:

Enclosed for filing in the captioned proceeding, in response to the Board's order served April 6, 2005, please find an original and ten (10) copies of Complainant Dyno Nobel Inc.'s identification of speaker and summary of argument for the Oral Argument scheduled herein on May 11, 2005.

Also enclosed is a disk with copies of the foregoing documents in both Wordperfect and Adobe Acrobat formats.

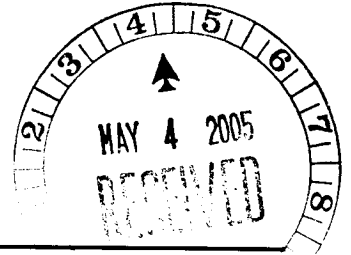
Thank you for your attention to this matter.

Sincerely,

Donald G. Avery
An Attorney for Dyno Nobel Inc.

cc: Counsel for CF Industries Inc.
Counsel for Kaneb Pipe Line Partners L.P., *et al.*

BEFORE THE
SURFACE TRANSPORTATION BOARD



DYNO NOBEL INC.,

Complainant,

v.

KANEB PIPE LINE PARTNERS, L.P.

and

KANEB PIPE LINE OPERATING
PARTNERSHIP, L.P.,

Defendants.

Docket No. 42081

**RESPONSE OF DYNO NOBEL INC.
TO APRIL 6, 2005 ORDER
SCHEDULING ORAL ARGUMENT**

Dyno Nobel Inc. ("DNI"), by its undersigned attorneys, hereby responds to the Surface Transportation Board's April 6, 2005 order scheduling oral argument in this docket and Docket No. 42084, *CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P., et al.* (not consolidated) for Wednesday, May 11, 2005.

DNI's oral argument will be presented by **Donald G. Avery**, one of its attorneys and a partner in the law firm of Slover & Loftus, 1224 17th Street NW, Washington, DC 20036, phone 202-347-7170.

Inasmuch as issues relating to the continued viability of the maximum rate prescription issued by the STB in Docket No. 41685 against Kaneb's predecessor, Koch Pipeline Company L.P., are common to both this docket and Docket No. 42084, also being argued before the Board on May 11, DNI expects to focus its oral presentation on the contract issues that are unique to its case. Counsel will of course be prepared to respond to any questions the Board may have regarding its previously submitted evidence and argument on the rate prescription issues.

A brief summary of DNI's planned oral presentation is attached.

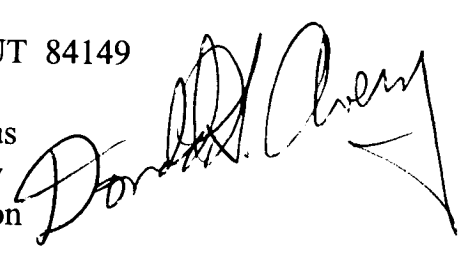
Respectfully Submitted,

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Dated: May 4, 2005

(202) 347-7170

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 40 C.F.R. § 1113.3 and by agreement among the parties, I have this 4th day of May, 2005, served copies of the foregoing Response by electronic (e-mail) delivery upon counsel for Kaneb and CF Industries, as follows:

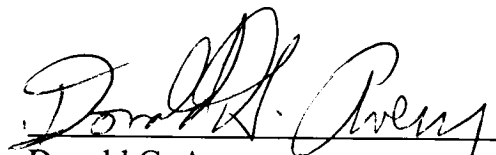
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Donald G. Avery

DYNO NOBEL INC. – SUMMARY OF ORAL ARGUMENT
BEFORE SURFACE TRANSPORTATION BOARD
IN DOCKET NO. 42081

May 11, 2005

In 1996, Kaneb's predecessor, Koch Pipeline Company, implemented an across-the-board rate increase on shipments of Anhydrous Ammonia ("AH") through its pipeline. CFI and Farmland Industries, the two largest shippers on the Koch Pipeline, promptly filed complaints before this Board challenging those increases. Although the 1996 increases also applied to AH shipments to DNI's ammonium nitrate ("AN") manufacturing facility at Louisiana, Missouri ("LOMO"), DNI did not join in the litigation at that time, as the 1996 increases did not materially affect its primary concern, which was the competitive balance between LOMO and a competing AN facility located elsewhere on Koch's pipeline.

The Board's May 9, 2000 decision requiring Koch to roll back its 1996 rates on most CFI and Farmland shipments, changed everything for DNI. When DNI realized that the rates its competitor (a CFI customer) was paying for AH shipments had been reduced while DNI's rates had not, DNI requested that Koch reduce its rates as well. DNI indicated that it was fully prepared to file its own complaint at the STB if necessary in order to restore rate parity.

To avoid duplicative litigation while Koch sought judicial relief from the CFI/Farmland prescription, the parties agreed to a compromise, pursuant to which Koch rolled back the 1996 rate increase on DNI's shipments prospectively, and agreed to maintain those reduced rates until such time as Koch was allowed to increase its charges to CFI. That agreement was memorialized in an October 25, 2000 letter agreement and an implementing Koch tariff, both of which are of record in Docket 42081. Koch, of course, lost its appeal in the DC Circuit,

and thus the May 9, 2000 rate prescription remained in force – as did its settlement agreement with DNI. True to its word, Koch made no attempt to increase DNI’s rates while it still operated the pipeline.

Things changed when Kaneb purchased the pipeline from Koch. As the Board is aware, on April 1, 2003, barely 5 months after acquiring the pipeline, Kaneb imposed a major rate increase on virtually all of its AH traffic – including both the CFI movements covered by the May 2000 prescription, and the LOMO movement covered by the DNI-Koch settlement agreement. The LOMO movement was singled out for the largest percentage increase, 68%.

After efforts to negotiate a compromise failed, DNI filed its complaint initiating Docket No. 42081 on June 16, 2003. Count 1 of that complaint sought enforcement of the DNI-Koch settlement agreement, through prescription of a maximum rate at the level called for by that agreement.

Kaneb moved to dismiss Count 1, insisting that neither the May 2000 rate prescription nor the October 2000 settlement agreement apply to it. The Board has already rejected that argument as applied to the prescription in Docket 42084, ruling that Kaneb is bound by the prescription as successor operator of the pipeline. It should reach the same conclusion with respect to the October 2000 settlement agreement, which by its very nature could only “run with the land” and bind the pipeline as a common carrier entity, rather than just the particular corporation that happened to own the pipeline at the time the settlement was signed.

The Board clearly has the authority to hold the pipeline to its bargain, and sound public policy requires that it do so. In the first place, the Board has repeatedly articulated a policy favoring privately-negotiated resolutions of disputes subject to its jurisdiction. This policy

necessarily requires that settlement agreements embodying such private resolutions be respected and enforced. As noted earlier, the October 25, 2000 agreement between DNI and the pipeline, which eliminated the need for a follow-on pipeline rate case before the Board, is just such an agreement. A failure to hold the pipeline to its bargain now would inevitably chill future settlement negotiations in STB proceedings.

Public policies favoring the enforcement of privately-negotiated transportation contracts between regulated carriers and their shippers, also compel enforcement of the pipeline's bargain with DNI. Congress, the courts, the Federal Energy Regulatory Commission, and the STB's predecessor the ICC, have all recognized the valuable role that is played by private transportation contracts, and all have established mechanisms for their enforcement. There is no conceivable reason why an AH pipeline regulated by the STB should be treated differently in this respect from other STB-regulated carriers, and from other pipelines regulated by FERC.

The Board has also asked how recognition of pipeline contracts might affect the rates paid by other shippers. Of course the STB has already answered this question in the case of railroad contracts, and FERC has likewise answered the question with respect to pipeline contracts: rates set by contracts are in effect credited at face value to the carrier's revenue requirements (Stand Alone Cost revenue requirements for railroads; cost of service for FERC-regulated pipelines) and the balance is allocated to other shippers (by means of a "discount rate adjustment" in the case of pipelines). It should be noted, however, that this issue is not presented by the DNI-pipeline settlement agreement, because by its terms it allows the pipeline to increase the DNI rate as soon as it is allowed to increase its rates covered by the Koch prescription.