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June 30, 2016

241024

**VIA HAND DELIVERY**

Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
June 30, 2016  
Part of  
Public Record

Re: Docket No. NOR 42147, Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC v. NuStar Pipeline Operating Partnership, L.P.

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding, please find an original and ten (10) copies of Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC's Complaint. We also are enclosing the filing fee in the amount of \$350 and an additional copy of the filing to be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,



Peter A. Pfohl  
An Attorney for  
Dyno Nobel, Inc. and  
Dyno Nobel Louisiana Ammonia, LLC

Enclosures  
FEE RECEIVED  
June 30, 2016  
SURFACE  
TRANSPORTATION BOARD

FILED  
June 30, 2016  
SURFACE  
TRANSPORTATION BOARD





**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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|                                    |   |                      |
|------------------------------------|---|----------------------|
| DYNOL NOBEL, INC.                  | ) |                      |
| 2795 East Cottonwood Parkway       | ) |                      |
| Suite 500                          | ) |                      |
| Salt Lake City, Utah 84121,        | ) |                      |
|                                    | ) |                      |
| and                                | ) |                      |
|                                    | ) |                      |
| DYNOL NOBEL LOUISIANA AMMONIA, LLC | ) |                      |
| 10800 River Road                   | ) |                      |
| Waggaman, LA 70094                 | ) | Docket No. NOR 42147 |
|                                    | ) |                      |
| Complainants,                      | ) |                      |
|                                    | ) |                      |
| v.                                 | ) |                      |
|                                    | ) |                      |
| NUSTAR PIPELINE OPERATING          | ) |                      |
| PARTNERSHIP, L.P.                  | ) |                      |
| 19003 IH-10 West                   | ) |                      |
| San Antonio, Texas 78527           | ) |                      |
|                                    | ) |                      |
| Defendant.                         | ) |                      |

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**UNREASONABLE PRACTICE COMPLAINT**

COMES NOW Dyno Nobel, Inc. and its wholly-owned subsidiary, Dyno Nobel Louisiana Ammonia, LLC (individually and collectively, “Dyno” or “Dyno Nobel”), to file this Complaint under 49 U.S.C. §§ 15901(b), 15501, and 15904, seeking a determination from the Board, relief, and monetary damages pertaining to certain actions and practices engaged in by Defendant NuStar Pipeline Operating Partnership, L.P. (“NuStar”).

This Complaint pertains to NuStar's requirement that Dyno pay in excess of \$10 million in costs associated with NuStar's professed failure to preserve or maintain its right-of-way for common carrier pipeline service to Dyno's new \$850 million anhydrous ammonia plant at Waggaman, Louisiana ("Waggaman Plant" or "Plant"). NuStar failed in its duty and representations as a common carrier to have pipeline service available to Dyno and then required Dyno to foot the bill to compensate for NuStar's failings. NuStar required payment of Dyno after NuStar had assured and represented to Dyno over a several-year period that NuStar was ready, willing, and able to provide pipeline service to meet Dyno's service needs in a short time-frame at a relatively minimal cost, without indicating any potential service problems. Dyno relied on NuStar's assurances and representations in deciding to locate its Plant at Waggaman, in committing to invest, and engaging in Plant construction.

NuStar's failure to preserve and maintain its common carrier pipeline right-of-way, its untimely discovery and notice of its alleged right-of-way problems, which jeopardized the Waggaman Plant deadlines, and its requirements for payment from Dyno to cover the costs associated with right-of-way restoration constituted an unreasonable practice in violation of Title 49. Dyno seeks a return of the in excess of \$10 million collected from Dyno with interest and a determination that NuStar is not entitled to recover any of the pipeline restoration costs from Dyno as part of NuStar's costs of providing

service to Dyno. In support of this unreasonable practice complaint, Dyno respectfully states as follows:

**The Parties**

1. Complainant Dyno Nobel, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business in Salt Lake City, Utah. Its wholly-owned subsidiary, Dyno Nobel Louisiana Ammonia, LLC, is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Waggaman, Louisiana. Dyno Nobel, Inc., is a wholly owned subsidiary of Incitec Pivot Limited (“IPL”), a major industrial chemicals company based in Melbourne, Australia. IPL is a listed company on the Australian Securities Exchange with over 5,000 employees across eighteen countries and a market capitalization in excess of \$5 billion.

2. Dyno is a leading manufacturer and supplier of commercial explosives, agricultural fertilizers, and industrial chemicals in the United States, Canada, and Latin America. The company ultimately traces its roots to Alfred Nobel, who invented dynamite in the mid-1800s.

3. Defendant NuStar is a Delaware limited partnership with its principal place of business in San Antonio, Texas. NuStar operates approximately 2,000 miles of anhydrous ammonia pipeline serving origins in Louisiana and Iowa and destinations in Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, and Nebraska. NuStar is the

successor to Kaneb Pipeline Partners, L.P., which in turn is the successor to Koch Pipeline Company, L.P.

4. NuStar is a common carrier pipeline engaged in the transportation of anhydrous ammonia between states. As such, NuStar is subject to the Board's jurisdiction under 49 U.S.C. § 15301(b). Under 49 U.S.C. § 15501, an interstate common carrier pipeline's rates, classifications, rules, and practices must be reasonable.

**Dyno's Need for NuStar's Pipeline Service at Waggaman**

5. Dyno uses anhydrous ammonia as a key input for producing explosives and nitrogen fertilizers. Dyno has obtained ammonia from various supply sources, especially the Gulf Coast area, where there are large reserves of natural gas, the primary feedstock for producing ammonia. The Gulf Coast also has a network of pipelines that provide transportation of natural gas.

6. One of Dyno's major manufacturing facilities is its Louisiana, Missouri ("LOMO") plant, where it produces ammonium nitrate and nitric acids, utilizing anhydrous ammonia as feedstock. To meet the production needs of Dyno's LOMO manufacturing plant, and for other commercial purposes, IPL and Dyno approved in 2013 the construction of an anhydrous ammonia production plant at a brownfield site located at Cornerstone Chemical Company's Fortier manufacturing complex in Waggaman, Jefferson Parish on the west bank of the Mississippi River in Louisiana.

7. IPL and Dyno are investing approximately \$850 million in its world-scale Waggaman Plant. The new facility, with state-of-the-art efficiency, safety, and environmental components, is expected to produce up to approximately 800,000 metric tons of ammonia annually and is the first ammonia plant built in Louisiana in over twenty-five years. The Plant is scheduled to begin full commercial operations in the third quarter of 2016.

8. The decision to build the Plant was made after a multi-million dollar feasibility study, and close consultation and engagement with local community, state, and federal officials. The investment will bring major economic benefits to the region. The project enjoys the active support of the State of Louisiana, Jefferson Parish, the Jefferson Economic Development Commission, and Greater New Orleans, Inc. – all of which helped make the project a reality. In particular, the facility has been projected to create approximately sixty (60) new permanent jobs, allow Cornerstone Chemical Company to retain over 400 existing workers, create over 440 new indirect jobs, and has supported a peak of up to 800 jobs during construction.

**NuStar's Obligation to Provide Service and Reasonable Rates**

9. A key factor in Dyno's decision to locate the Plant at Waggaman was the availability of a direct connection to an existing anhydrous ammonia pipeline network to serve Dyno's transportation needs. The site also has direct access to transportation infrastructure for the inbound materials needed to produce ammonia.

10. NuStar's common carrier anhydrous ammonia pipeline, through its existing lateral Fortier Branch (connecting from Taft, Louisiana), provides a direct connection between Dyno's Waggaman and LOMO plants, as well as to a large industrial customer that has supported the investment and to the rest of NuStar's common carrier interstate pipeline system.

11. Without this connecting pipeline service, there exists no feasible alternative means for Dyno to transport its anticipated ammonia production to LOMO and other locations, especially given the substantial volume of product involved.

12. As a common carrier that held itself as able to provide service on, and that has never abandoned, the Fortier Branch, NuStar has an obligation to provide pipeline service to Dyno. Given its investment in the Waggaman Plant, Dyno wanted to be assured that NuStar would provide the required transportation at a reasonable and known cost. Dyno would not have located its new plant at Waggaman without assurance from NuStar that it was willing and able to serve the facility.

13. Since January 2012, Dyno actively worked with NuStar to ensure that NuStar would satisfy its commitment and obligation to serve the new Waggaman Plant, through NuStar's Fortier Branch connection, and that it would meet the Plant deadlines. For over two years, until February 2014, NuStar provided repeated assurances and representations to Dyno that NuStar would be ready, willing, and able to serve the Waggaman Plant on a timely basis at a modest rate differential compared to its existing

service at the Taft plant, and NuStar gave no indication that it would experience any difficulties meeting the Plant's ammonia transportation needs.

14. NuStar never suggested at the time that the Fortier Branch had any potential right-of-way problems or that Dyno would be required to cover costs for the restoration of any right-of-way as a condition of receiving service at Waggaman. Indeed, NuStar never abandoned the Fortier Branch or its obligations to maintain the pipeline, and NuStar represented that the pipeline was available to meet Dyno's ammonia transportation needs. Dyno reasonably relied upon NuStar's common carrier status and affirmative representations in locating and constructing the Plant at Waggaman.

15. NuStar and Dyno had a conference call on October 2, 2012, where NuStar estimated that the reactivation cost for the Fortier Branch would be \$980,000, plus or minus 15%. NuStar stated it expected reactivation to take six months from final approval and that its final approval would take approximately six weeks. NuStar also stated it had "no surprises expected" with reactivation. NuStar confirmed those estimates in subsequent discussions through 2013.

16. Up until February, 2014, Dyno had no reason to believe that NuStar would have any problems in timely serving the new Waggaman Plant.

**NuStar's Belated Disclosure of its Alleged Right-of-Way Problems**

17. The parties scheduled a conference call for February 21, 2014, to conduct a "page turn" review of a construction and reimbursement agreement. During that

call, NuStar reported that it had discovered that its right-of-way, termed predial servitudes under Louisiana law, had lapsed because the Fortier Branch had been idle for 15 years. NuStar claimed that an “obscure” Louisiana statute, Louisiana Civil Code Article 753, specified that predial servitudes expire if unused for more than 10 years. Ultimately, 51 individual servitudes along the right-of-way were implicated.

18. Both NuStar and Dyno previously understood that the Fortier Branch had not been used to transport ammonia since the 1990s. However, the line has not been abandoned, and NuStar informed Dyno that basic line maintenance had continued in compliance with federal Pipeline and Hazardous Materials Safety Administration requirements.

19. NuStar has a fully staffed right-of-way department charged with maintaining all necessary right-of-way agreements and instruments necessary for it to maintain in place its pipeline and conduct its business. NuStar has also conducted business in Louisiana for many years, and was or should have been fully aware of all potential right-of-way problems since at least January 2012, when NuStar first represented to Dyno that its ammonia pipeline was able to serve the Waggaman Plant, and it did not indicate to Dyno any potential right-of-way problems.

20. NuStar’s sudden and untimely revelation with regard to the Fortier Branch service alarmed Dyno as it threatened to upset Dyno’s service to the plant, and the timetable for the plant, which could cost Dyno millions of dollars. The lack of service

could also potentially disrupt the start of the Plant's regular operations, as well as necessary line maintenance, construction of connections, testing, necessary repairs, and other related pipeline operation and service activities required prior to full service activation.

**NuStar's Insistence That Dyno Pay in Advance for Restoring the Right-of-Way**

21. On March 18, 2014, the parties had another conference call, during which NuStar reported that it had engaged both a right-of-way contract firm and a law firm and had developed a budget for restoring the right-of-way ranging from \$4.7 million to \$9.5 million. NuStar insisted that Dyno pay for restoring the right-of-way before service began so that service could be initiated on a timely basis.

22. NuStar's insistence that Dyno meet NuStar's payment demands in order to receive pipeline service and to reimburse NuStar for the consequences of its own neglect was an unreasonable practice. NuStar forced Dyno to bear a substantial financial burden that should not have existed and was not Dyno's responsibility or fault.

23. Ultimately, Dyno was forced to acquiesce to NuStar's unreasonable demand. Dyno had no effective alternative as construction of the plant was already well underway. Dyno faced substantial financial detriment from delaying the Plant, including the risk of not being able to move ammonia from Waggaman, thereby negating the value of the investment in the Plant.

24. Under duress, Dyno thus committed to and did pay NuStar in excess of \$10 million under various reimbursement agreements, in addition to NuStar's regular transportation charges for Dyno's existing ammonia shipments on the pipeline.

25. With Dyno's financial backing, NuStar was ultimately able to restore the right-of-way for the pipeline.

26. Dyno was required to pay over \$10 million for renewed right-of-way and associated costs that were legally unnecessary or that NuStar should have paid itself or avoided in the first place. These payments were not part of the rates and terms that Dyno and NuStar discussed and agreed upon, and the costs were substantially elevated due to the late discovery and notice by NuStar of its alleged right-of-way problems. Dyno was also forced to pay additional costs for attorneys and other experts. In addition, even if the costs were necessary, NuStar could have restored the right-of-way faster and at a cost substantially less than the more than \$10 million had it acted more effectively and efficiently.

27. Dyno specifically reserved its rights under the reimbursement arrangements with NuStar and did not waive its rights as a common carrier pipeline shipper.

28. Additionally, NuStar's conclusion that the servitudes for the Fortier Branch had been terminated under Louisiana law, without demand or notice by any servitude owner, was entirely premature and without adequate justification.

29. Any right-of-way costs incurred were predicated on a fundamental failure by NuStar to abide by its common carrier service obligations, including maintenance, repair, and service over its pipeline, even as it sought to restore any potentially lapsed right-of-way servitudes.

30. NuStar's approach to the matter assumed the worst, and created the most risk and expense for Dyno, while insulating NuStar from the adverse consequences of its own creation and failure.

### **NuStar's Unreasonable Practice**

31. NuStar's insistence that Dyno pay for restoring the right-of-way as a condition for receiving service violates NuStar's obligation as a pipeline common carrier. It also contravenes the rates and other terms and conditions that NuStar established and provided to Dyno for transporting anhydrous ammonia from the Plant.

32. Dyno relied upon NuStar's common carrier status in deciding to locate the Plant in Waggaman. Dyno also relied upon the rates, which did not include any costs for restoring the right-of-way, that NuStar established for transporting anhydrous ammonia from Waggaman.

33. NuStar's insistence that Dyno pay for the pipeline right-of-way restoration costs as a condition of receiving service constitutes an unreasonable practice.

34. NuStar's insistence that Dyno pay for the cost of restoring the right-of-way before NuStar would provide service also constitutes an unreasonable practice

because it violates the Board's established policy that such costs cannot be recovered in advanced of providing actual transportation service.

35. Neither this proceeding, nor the granting of the relief requested herein, will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

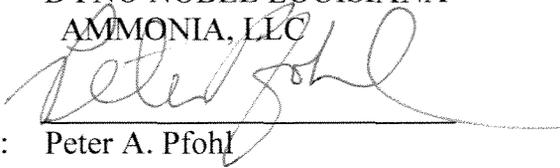
**Prayer for Relief**

WHEREFORE, Complainant Dyno requests that Defendant NuStar be required to answer the charges herein; that after a hearing and investigation conducted pursuant to 49 U.S.C. § 15901(a) and the Board's implementing regulations, the Board find the assailed charges are unreasonable in violation of 49 U.S.C. § 15501(a); that the Board award Dyno damages, with interest, pursuant to 49 U.S.C. § 15904(b) for all unlawful payments it has made to NuStar; and that the Board grant to Dyno such other

and further relief as the Board may deem proper on the record presented.

Respectfully submitted,

DYNO NOBEL, INC. and  
DYNO NOBEL LOUISIANA  
AMMONIA, LLC



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Dated: June 30, 2016

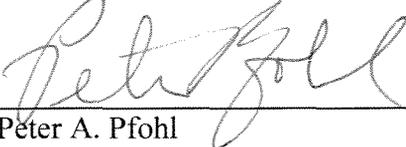
*Attorneys for Complainants*

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1111.3, I hereby certify, that I have this 30th day of June, 2016 caused to be served copies of this Complaint by overnight express courier on the senior legal officers of NuStar Energy, L.P., as follows:

Karen Thompson  
Senior Vice President and General Counsel  
Litigation, Regulatory & Environmental  
NuStar Energy L.P., General Partner of  
NuStar Pipeline Operating Partnership, L.P.  
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