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SERVICE DATE – NOVEMBER 21, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42084

CF INDUSTRIES INC. v. KANEB PIPE LINE PARTNERS, L.P.  
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Decided: November 16, 2006

In a decision served on August 12, 2004, the Board directed Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, Kaneb) to stop charging rates to CF Industries, Inc. (CFI) for the pipeline transportation of anhydrous ammonia in excess of those prescribed in CF Industries Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served May 9, 2000) (Koch), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001), and to pay reparations. The Board also noted that there could be changed circumstances associated with Kaneb's purchase of the pipeline from Koch that might warrant vacating the prescription, and asked for additional evidence on that issue. The evidence was timely submitted under a protective order issued by the Board on September 16, 2004, an oral argument was held, and post-argument briefs were filed in June 2005.

The Board subsequently learned that Kaneb was acquired by Valero L.P. (Valero) by stock purchase in July 2005. In a decision served on November 3, 2005, the agency requested more information about that transaction because of its possible implications for the instant proceeding, and ordered Kaneb to submit a supplemental pleading.

Kaneb timely filed its supplemental evidence, providing additional information about Valero's acquisition. CFI filed a reply, which also included a conditional motion to conduct discovery, and Kaneb replied on May 3, 2006. The Board granted CFI's conditional discovery motion in a decision served on May 30, 2006 and set a schedule for its submission.<sup>1</sup>

On October 10, 2006, the parties jointly filed a public submission, which includes a motion, and a confidential submission, which includes the same motion and a settlement agreement. The parties explain that they have resolved their dispute and have entered into a settlement agreement that resolves all issues in this proceeding. They jointly request that the Board approve the agreement without condition and place it under

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<sup>1</sup> The recent procedural history of this proceeding is set out in more detail in the decision served on September 15, 2006, in this proceeding.

seal. The parties further ask that the Board vacate the Koch rate prescription<sup>2</sup> and prescribe maximum reasonable rates for CFI pursuant to the parties' agreement. The movants note that they will ask the Board every year to renew the prescription based on the agreement's terms.

## DISCUSSION AND CONCLUSIONS

The parties' motion will be granted. We will approve the settlement agreement proffered by the parties to this long-running dispute; we will vacate the currently existing rate prescription for certain pipeline transportation provided to CFI as sought by the only two parties to that prescription; and we will prescribe the maximum reasonable rates for CFI as set forth in the settlement agreement. Our action is consistent with the Board's longstanding policy of encouraging the private resolution of disputes through voluntary negotiations whenever possible. See United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, Et Al., STB Docket No. 38302S (STB served Aug. 2, 2005) (Spent Nuclear Fuel).

As in Spent Nuclear Fuel, our approval of the settlement agreement and our prescription of its rates and rate update methodologies are based on the parties' stipulation and not on a finding of reasonableness under applicable Board standards. As such, the terms and obligations of the settlement agreement and the prescribed rates and rate update methodologies will be binding only as between the signatories to the settlement agreement and their respective successors or assigns, as provided in that agreement, and will have no precedential effect.

### It is ordered:

1. The parties' joint motion is granted.
2. The settlement agreement submitted in STB Docket No. 42084 is approved and will be kept under seal.
3. The prescription imposed in STB Docket No. 41685 for certain pipeline transportation provided to CFI is vacated.
4. The rates and rate update methodologies set forth in the parties' settlement agreement are prescribed as the maximum reasonable rates for CFI as between the signatories to the settlement agreement and their respective successors or assigns.

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<sup>2</sup> Because the Board has found that the Koch rate prescription for certain transportation provided by this pipeline to CFI entered in STB Docket No. 41685 continues to apply until vacated, the parties in their motion and settlement agreement refer to the "rate prescription now in effect in STB Docket No. 42084." See decision served August 12, 2004, in STB Docket No. 42084.

5. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary