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ALJ

SERVICE DATE - DECEMBER 9, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41685

CF INDUSTRIES, INC.

v.

KOCH PIPELINE COMPANY, L.P.

Decided: December 4, 1997

Two motions have been filed by the parties, who request expedited decision and do not seek either oral argument or right to reply.

1. In a motion filed on November 25, 1997, CF Industries (CF) requests an order directing Koch Pipeline Company (Koch) to produce for separate depositions, Dr. Amy Bertin Candell and Dr. Joseph P. Kalt.

CF states that Drs. Candell and Kalt jointly sponsored an expert Verified Statement for Koch and each separately verified the statement.

Koch opposes the separate deposition of the witnesses and proposes that they be deposed jointly. Koch argues that a single joint deposition would be more efficient and less burdensome. Koch submits that both witnesses are economists, affiliated with the same organization and collaborated on all phases of the testimony. Koch says that joint depositions are not uncommon before the Board. Koch cites two joint depositions taken in STB Finance Docket No. 33388. However, these evidently were held by agreement among the parties because they were not ordered by the Discovery Judge.

CF has an absolute right to depose the witnesses separately. The motion to compel is granted.

2. In a motion filed on December 3, 1997 Koch requests that depositions be limited to one for each expert. Koch says that CF believes it can depose Koch's experts both after the filing their opening evidence and after filing their reply evidence. The parties filed the motion and the response simultaneously.

Paragraph 2. of the Joint Stipulation of the parties adopted in this proceeding governs this dispute. It provides, in pertinent part, "Parties are entitled to depositions of all expert witnesses who submit testimony in the first two rounds within thirty days of the service of that testimony."

Koch argues that this provision does not specifically address the question of multiple depositions of an expert witness. It says that it understood this provision to insure that all experts could be deposed whether filing testimony in the first round, the second round or both. Koch contends that if the provision meant that an expert witness could be deposed twice, it could have been clearly stated.

CF, in its response, relies upon the plain meaning of the provision. CF stresses that the provision permits depositions of expert witnesses who submit testimony in the first two rounds "within thirty days of the service of *that testimony*". Thus, CF argues that the provision means that deposition could be taken within thirty days of the service of the witness' first round of testimony and within thirty days of the witness' second round of testimony.

CF's reading of the provision is in accord with its unambiguous language. Koch's motion to limit the number of depositions of a witness is denied. I also find, as requested by CF, that the parties may depose each expert only on the testimony the expert presented in the immediately preceding round.

This decision is effective on the service date.

**By the Board, Jacob Leventhal, Administrative Law Judge**

**Vernon A. Williams  
Secretary**