

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: December 2, 2005

In a decision served on August 12, 2004, in this rate complaint case, 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), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001, and to pay reparations.¹ 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, 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. The Board ordered Kaneb to submit, by November 23, 2005, a supplemental pleading detailing the terms and conditions of Valero's acquisition of Kaneb, and to describe the impact, if any, of that transaction on the issues and arguments before the agency in this case. The Board stated that CFI and Dyno could file replies by December 5, 2005, and that the parties should then be prepared to attend a conference with Board staff.

Kaneb submitted a supplemental brief on November 22, 2005. The pleading responds in part to the Board's request by providing portions of two merger agreements and briefly describing Kaneb's acquisition by and merger with Valero. Kaneb maintains, however, that it needs additional time to prepare a more complete response to the Board's order. Valero, Kaneb states, has not yet completed the final purchase price accounting needed to respond to the Board's concerns, noting that standard accounting procedures provide for one year after the merger date to complete this process. Kaneb believes that the final accounting will be done by

¹ On October 13, 2004, the Board granted a petition filed by Dyno Nobel Inc. (Dyno) to intervene in this proceeding. Dyno is the complainant in a related proceeding pending before the Board, Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P., et al, STB Docket No. 42081.

January 31, 2006, and requests an extension of time to file an additional supplemental brief on that date. It also asks that reply briefs be due on February 14, 2006.

Dyno replied in opposition to Kaneb's extension request, arguing that it is unjustified because the reason for the delay rests solely with Kaneb and Valero. Dyno also asks that, if the extension request is granted, Kaneb be put on notice that additional extension requests will be denied "absent truly exigent circumstances."

Kaneb's extension request is reasonable and will be granted. Valero is attempting to complete the accounting process more quickly than required under standard accounting procedures. Furthermore, the information which will be generated by the accounting is directly responsive to the Board's November 3 request.

Kaneb's supplemental filing is due on January 31, 2006, and replies may be filed by February 14, 2006. The Board will carefully examine any future extension requests in light of the circumstances. The parties should be ready to attend a conference after February 14, 2006.

It is ordered:

1. Kaneb's supplemental pleading is due by January 31, 2006.
2. Replies from CFI and Dyno are due by February 14, 2006.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary