

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DYNOL NOBEL, INC., and)	
DYNOL NOBEL LOUISIANA AMMONIA, LLC)	241315
)	
Complainants,)	ENTERED
)	Office of Proceedings
v.)	August 19, 2016
)	Part of
)	Docket No. 42147 Public Record
NUSTAR PIPELINE OPERATING)	
PARTNERSHIP, L.P.)	
)	
Defendant.)	
)	

**COMPLAINANTS’ REPORT ON THE PARTIES’ CONFERENCE AND
REQUEST TO ADOPT A PROPOSED PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. § 1111.10(a), Complainants Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC (individually and collectively, “Dyno”), submits its report on the parties’ conference and requests that the Board adopt the procedural schedule set forth in Attachment 1. In support hereof Dyno states as follows:

1. Dyno filed its Complaint initiating this proceeding on June 30, 2016. Dyno seeks, *inter alia*, a Board determination and award of damages that Defendant NuStar Pipeline Operating Partnership, L.P. (“NuStar”) engaged in unreasonable and unlawful practices in violation of 49 U.S.C. § 15501(a) by requiring Dyno to pay over \$10 million in improper costs due to 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. NuStar filed its Answer (as revised) on July 20, 2016.

2. Under the Board’s Rules of Practice (“Rules”), the parties in this case are to “meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed.” 49 C.F.R. § 1111.10(a). The parties have engaged in such telephone discussions on August 18, 2016.

4. The Board’s Rules also provide that “[w]ithin 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.” *Id.*¹

5. Dyno requests that the Board adopt the proposed procedural schedule set forth in Attachment 1. The proposed schedule calls for a 90-day discovery period, followed by evidentiary filings to be completed over the next 150 days. Dyno believes this schedule affords the parties sufficient time to present their cases, assuming that discovery is carried out in a fair and expeditious manner. This schedule also comports with those adopted in similar recent unreasonable practice cases.² Dyno reserves the right to ask the Board to amend the schedule if it becomes necessary in order for Dyno to properly develop or present its case to the Board.

6. Dyno has discussed its proposed procedural schedule set forth in Attachment 1 with NuStar. However, NuStar has indicated that it is generally not in

¹ The filing of this Report was deferred pending the parties’ August 18, 2016 telephone conference.

² See, e.g., *Agrium & Agrium U.S. Inc. v. Canadian Pac. Ry. Co.*, STB Docket No. NOR 42145 (STB served Sept. 15, 2015) at 3-4 (“*September 2015 Agrium Decision*”); *Cargill, Inc. v. BNSF Ry. Co.*, STB Docket No. NOR 42120 (STB served Jan. 4, 2011) at 6-7 (“*January 2011 Cargill Decision*”).

agreement with Dyno's proposal on the grounds that it is premature to adopt any schedule until the Board rules on NuStar's pending motion to dismiss, on the chance that Dyno's Complaint is dismissed, or that the Board's decision narrows the issues or otherwise modifies aspects of the procedural schedule. NuStar also indicated that it may want to allow time for post-evidentiary discovery (*e.g.*, after Dyno files its opening evidence) as well as final briefs. Dyno understands that NuStar will be filing its own separate report shortly to address these and any other issues.

7. Dyno does not plan on replying to NuStar's separate report.

However, Dyno respectfully submits that the Board should not delay consideration and adoption of a procedural schedule. As stated, the Board's Rules require the parties at this time to "file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in this case." 49 C.F.R. §1111.10. Also, even where the Board has narrowed the issues, it has still issued appropriate procedural schedules at the time it rules on motions to dismiss. *See, e.g., January 2011 Cargill Decision* at 7. Additionally, the Board looks with great disfavor on motions to dismiss,³ as well as on requests to delay the processing of cases pending resolution of these motions.⁴

³ *See September 2015 Agrium Decision* at 1; *January 2011 Cargill Decision* at 4; *Entergy Ark., Inc. v. Union Pac. R.R.*, STB Docket No. 42104 (STB served Dec. 30, 2009) at 3.

⁴ 49 C.F.R. 1112.2 ("The filing of motions or other pleadings will not automatically stay or delay the established procedural schedule."). *See also Expedited Procedures for Processing Rail Rate Reasonableness, Exemption & Revocation Proceedings*, 1 S.T.B. 754, 763-64 (1996) and 1 S.T.B. 859, 864 (1996); *AEP Tex. N.*

8. NuStar has thus far not identified any unique need or basis for post-evidentiary discovery, which would be a highly unusual and unnecessary deviation from the Board's standard practice. Additionally, discovery disputes, requests for any supplemental discovery, and/or requests for briefs can be handled if and as such needs may arise under standard motions practice. Issuance of a standard procedural schedule without such unnecessary add-ons complies fully with Board precedent and the national rail transportation policy "for the expeditious handling and resolution of all [Board] proceedings." 49 U.S.C. § 10101(15).

9. During the conference call, Dyno and NuStar also discussed the need for Board adoption of a protective order governing the exchange and use of confidential and highly confidential information in this case. NuStar asked for this issue to be deferred. Dyno does not anticipate that this issue should be contentious, and expects that one or both of the parties will file at a later time a motion asking that the Board adopt an appropriate protective order.

Co. v. BNSF Ry. Co., STB Docket No. 41191 (Sub-No. 1) (STB served Sept. 11, 2003) at 2 (denying BNSF's request asking the Board to withhold issuance of a procedural schedule until the Board decided BNSF's motion to dismiss). Delay in the issuance of a procedural schedule is usually authorized only where the parties agree to the delay.

WHEREFORE, for the reasons set forth above, Dyno requests that the Board accept its report on the parties' conference and that the Board issue an order adopting the procedural schedule set forth in Attachment 1.

Respectfully submitted,

DYNO NOBEL, INC. and
DYNO NOBEL LOUISIANA
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Dated: August 19, 2016

By: /s/ Peter A. Pfohl
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**DYNO'S PROPOSED PROCEDURAL SCHEDULE
FOR STB DOCKET NO. 42147**

Day	Event
0	Board Serves Procedural Schedule; Discovery Begins
0+90	Discovery Ends
0+150	Dyno's Opening Statement
0+210	NuStar's Reply Statement
0+240	Dyno's Rebuttal Statement

CERTIFICATE OF SERVICE

I hereby certify that this 19th day of August, 2016, I caused a copy of the foregoing Report to be served by U.S. First Class Mail or by more expeditious means on the following counsel for Defendant NuStar Pipeline Operating Partnership, L.P.:

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/s/ Katherine F. Waring
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