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August 25, 2016

VIA ELECTRONIC DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, N.W.
Washington, DC 20423

ENTERED
Office of Proceedings
August 25, 2016
Part of
Public Record

RE: *Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC v. NuStar Pipeline Operating Company, L.P.*, Docket No. NOR 42147: NuStar Pipeline Operating Company, L.P. Conference Report

Dear Ms. Brown:

NuStar Pipeline Operating Partnership, L.P. (“NuStar”) hereby files with the Surface Transportation Board (“Board”) its Conference Report, as required by 49 C.F.R. § 1111.10(a), in the above captioned proceeding.

If there are any questions regarding this filing, please feel free to contact the undersigned directly, either by telephone (202) 661-6950 or by e-mail: cbarr@postschell.com.

Very truly yours,

/s/

Christopher J. Barr

CERTIFICATE OF SERVICE

Pursuant to Rule 1104.12 of the Surface Transportation Board's Rule on Service of Pleadings and Papers, I hereby certify that I have this day served a copy of the foregoing document on all parties of record in this proceeding, Docket No. 42147, electronically or by first class mail postage prepaid.

Dated at Washington, D.C., this 25th day of August 2016.

/s/
Jessica R. Rogers
Post & Schell

**UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**NUSTAR PIPELINE OPERATING PARTNERSHIP, L.P.’S
CONFERENCE REPORT**

Pursuant to of the Surface Transportation Board’s (“Board”) Rules of Practice, 49 C.F.R. § 1111.10(a), NuStar Pipeline Operating Partnership, L.P. (“NuStar”) submits this Conference Report (“NuStar’s Report”), and opposes the procedural schedule submitted by Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC (individually and collectively, “Dyno” or “Complainant”) in the report filed by Complainant on August 19, 2016 (“Complainant’s Report”). In support of NuStar’s Report, the Company states as follows:

1. The Board’s Rules of Practice require the parties to meet and discuss procedural matters, including discovery and a schedule. The Parties participated in the required conference on August 18, 2016 via telephone but were not able to come to an agreement on procedural matters, given NuStar’s pending Motion to Dismiss.

2. Specifically, NuStar proposed to defer a decision on developing a procedural schedule, given that the outcome of the Motion to Dismiss could shape the scope and nature of this proceeding or even obviate the need for a schedule entirely. NuStar’s proposal is one based on practicality and the desire to save time and money for all involved.

3. The Complainant disagreed and instead filed its conference report on August 19, 2016 setting forth a unilateral proposed schedule. NuStar opposes the Complainant's proposed schedule both because it is premature and because it fails to account for the unique legal questions at issue in this proceeding and the potential framing of relevant issues after the Board rules on the Motion to Dismiss. Should the Board deny NuStar's Motion to Dismiss entirely, NuStar requests that the Board order the parties to confer at that time and submit a proposed schedule,¹ that would reflect the Board's order.

4. In its filing, Complainant erroneously cites 49 C.F.R. § 1112.2 in support of its position that NuStar's pending Motion to Dismiss should not be taken into consideration in establishing a procedural schedule. Specifically, Complainant quotes 49 C.F.R. § 1112.2, in footnote 4, for the proposition that "filing of motions or other pleadings will not automatically stay or delay the established procedural schedule." However, there is no established procedural schedule in this proceeding. Resolution of the pending Motion to Dismiss may obviate the need for a schedule entirely or may modify the scope of the proceeding so that the schedule proposed by the Complainant requires amendment. The most sensible approach is to postpone discussion of the schedule until the Board has made its determination.

5. Finally, NuStar disputes Complainant's position that the standard schedule provides adequate time for evidentiary development and briefing in this matter. The most significant components of this proceeding are issues of law, and not issues of fact – particularly

¹ The Board has the authority to delay issuance of a procedural schedule. *See, e.g., American Fuel & Petrochemical Manufacturers v. BNSF Ry. Co.*, STB Docket No. 42146 (STB Served June 30, 2016). NuStar also notes that in *Cargill, Inc. v. BNSF Ry. Co.*, STB Docket No. NOR 42120 (STB served Jan. 4, 2011), cited by the Complainant for the proposition that even where a motion to dismiss is pending, a procedural schedule should be established, the parties generally agreed on the procedural schedule, and only disagreed to the extent that the defendant requested the same number of days to prepare its reply statement as the complainant had for its opening statement. That is not the situation in the present case at this time, although NuStar does believe that an agreement might be reached regarding an appropriate procedural schedule at a conference after the Board makes a determination on the Motion to Dismiss.

the dispositive issue of whether NuStar had a common carrier duty to provide service to the Complainant, given the uncontested fact that providing service from NuStar's system to Waggaman required investment and restarting a long-idled lateral. Complainant's allegations also challenge the reasonableness of NuStar's actions surrounding the loss of its easement rights, which involves the operation of Louisiana state law and private contract law. This case, therefore, involves a number of novel legal issues for the Board's consideration which necessitates post-evidentiary briefs to address these legal issues. Further, while Complainant urges expeditious discovery, NuStar's proposal to provide for the potential to include limited discovery after the submission of evidence could, depending on the agreed-upon schedule, be an even more efficient means of exploring the basis of the evidence presented, would not present an undue burden, and need not result in a longer schedule.

For these reasons, NuStar requests that the Board reject the Complainant's procedural schedule at this time or postpone considering the schedule. NuStar further requests that the Board order the parties to have another conference to establish a procedural schedule at the time it rules on the Motion to Dismiss, if it is needed.

Respectfully submitted,

By: _____ /s/

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Dated: August 25, 2016

Counsel for NuStar Pipeline Operating Partnership, L.P.