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STB Docket No. 42084
CF INDUSTRIES v. KANEB PIPE LINE PARTNERS, L.P.
and KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

This case involves a complaint filed by CF Industries, Inc. asking the Board to direct Kaneb Pipe Line Partners to stop charging rates higher than those previously prescribed by the Board for the pipeline transportation of anhydrous ammonia. The rates at issue were prescribed in a Board decision issued in 2000 which resolved a rate complaint brought by CFI against Koch Pipeline Company, the previous owner of the pipeline. In the Fall of 2002, Kaneb purchased the pipeline from Koch for approximately $140 million. Some five months later Kaneb increased the rates charged to CFI above the maximum rate levels prescribed by the Board in the Koch decision. CFI subsequently filed the instant complaint.

The draft decision before you finds that Kaneb cannot unilaterally raise its rates above the prescribed levels. The decision explains that, when Kaneb purchased the pipeline, it stepped into Koch's shoes as the carrier providing the transportation at issue and became subject to the same regulatory and statutory requirements that applied to Koch. These requirements include the statutory prohibition found in section 15503 of the Act against unilaterally raising prescribed rates.

Kaneb maintains that its purchase of the pipeline constitutes a material change of circumstances and that this justifies its rate increase. This argument, however, runs afoul of the Supreme Court's decision in Arizona Grocery Company v. Atchison, Topeka & Santa Fe Railroad, where the Court reasoned that an ICC rate prescription was an action that was legislative in nature and thus had the force of a statute in establishing the maximum lawful rate. That precedent is applicable here. The Board's rate prescription has the force of a statute, and the carrier is bound by and cannot charge more than the prescribed rate unless the Board acts to remove that prescription.

The draft decision then turns to the issue of whether the prescription should nonetheless be vacated for future shipments in light of changed circumstances. In making this determination, the agency traditionally assesses whether the factual and legal bases of the prescription remain valid. Here, the Koch prescription was based on a finding that Koch was earning sufficient revenues from its existing rate structure to cover its costs and to provide a sufficient return on investment. Kaneb argues that, because it paid a much higher price for the pipeline than Koch did, its higher investment base is a significantly changed circumstance that justifies vacating the prescription.

The draft decision finds that the evidence of record is not sufficient for the Board to make this determination. Although it is known that Kaneb paid $140 million for Koch's business, it is unclear what assets were encompassed in that purchase price and how much of the purchase price is attributable to the pipeline itself. Without this information, it cannot be determined whether or how the purchase price may affect the factual underpinnings of the existing prescription, and thus whether the prescription can or should be lifted. Consequently, the draft decision asks Kaneb to submit additional information on this matter and other information relevant to its claim of materially changed circumstances in the form of a verified statement. The draft would set a procedural schedule for the submission of evidence and argument to develop an adequate record on which to decide this matter.

The draft decision also would require Kaneb to reduce its rates to CFI to the levels prescribed in the Koch case and awards reparations.

If you have any questions, I'll be happy to respond to them now.