

(10:04 a.m.)

CHAIR NOBER: Okay. Well good morning and I think today's argument will come to order. We are holding a hearing addressing two matters involving the transportation by pipeline of anhydrous ammonia. And these are the first such pipeline matters before the Board in some time. Now I have a little bit of historical perspective on this subject.

Ten years ago, when the ICC was eliminated and the STB was created, many were surprised to learn that the agency had jurisdiction over the rates charged for transportation by pipeline of all commodities that are not gas, oil or water. At the time, nobody even knew if any such pipelines were in existence. It took work by the General Accounting Office and changes in market conditions to demonstrate that there ultimately were over 20 such pipelines that are regulated by our agency. Now frankly, Congress grappled with whether or not to even continue pipeline regulation, and whether or not rate regulation over this kind of an asset was even necessary. But Congress ultimately decided that it should and so here we are.

Now in these matters, in 2000 the Board issued its first decision in a pipeline case in *CF Industries v. Koch Pipeline Company*. And in that case, the Board found that the rate increases that Koch proposed were unreasonable under a revenue adequacy test. The Board then ordered the rate set at a pre-increase level and ordered the payment of reparations. And subsequent to that, Koch sold their pipeline to Kaneb and Kaneb asked the Board to vacate the rate prescription. And that request has raised a host of questions such as, what circumstances justify vacating a rate, what would be the effect of vacating the rate, and if the Board vacated the rate and the new rate were challenged, is the test we used in 2000 to evaluate this still appropriate.

Now in the related pipeline matter, Dyno Nobel asked us to review an agreement regarding its rate. That agreement has tied its rate for some period of time to the rate prescription

the Board ordered in the *CF Industries* case. Now on the merits, I can tell you I have an open mind on these issues and all possible solutions and I look forward to the parties' thoughts.

The typical way we handle oral arguments procedurally is give each party in turn their time to make a presentation. We generally try to hold questions to the end, although not always. And then we will, I guess, ask if the proponents want to reserve any time for rebuttal at the end, and that sometimes they do, sometimes they don't. So we'll leave it to your time. But I think we have given 20 minutes to each of the parties for their presentation, and then we typically go in rounds of questions, 5 minutes each in oral arguments, but sometimes members just interject and we'll just answer those too. So with that, I will see if Vice Chairman Buttrey has any questions or comments.

VICE CHAIRMAN BUTTREY: I think your opening marks were sufficient Mr. Chairman.

CHAIRMAN NOBER: Commissioner Mulvey?

COMMISSIONER MULVEY: Just briefly, just first of all I would like to extend birthday wishes to my younger and more youthful colleague, Doug Buttrey. I look forward to hearing the oral arguments in this first pipeline case brought before the Board since I became a member. I have long been interested in this important component of the America's transportation infrastructure. I began the GAO study on pipelines, on how to spawn new pipelines to which Roger referred earlier, and while I was at the Department of Transportation, IG's office, and at the House Transportation Infrastructure Committee. My responsibilities included pipelines. Also, I am proud of the contribution I made in developing the Pipeline Safety Act of 2002. Albeit all of that prior experience related much more to oil and natural gas pipelines. Most of our work, however, revolved around safety regulations, but here today we address economic regulatory issues. The issues surrounding this case are fundamental to our analysis in determining what charges are fair and reasonable. Moreover, the decision that we eventually reach in this proceeding, could very likely have important implications

for our railroad cases in the event that railroads ever achieve revenue adequacy. Thank you, Mr. Chairman, I look forward to hearing our witnesses today.

CHAIR NOBER: Okay. Now normally we start from my left to my right, but I think Mr. Tabor you're the proponent and you're here first, so --

MR. TABOR: Yes sir.

CHAIR NOBER: -- we'll recognize you for 20 minutes. And are you going to reserve time?

MR. TABOR: Before we start I have two procedural matters I'd like -

CHAIR NOBER: Okay.

MR. TABOR: No, first of all no -- given the fact that I have 20 minutes and each of my opponents in two different cases has 20 minutes, I think I better just get through the things I have to say. I don't think that I'm going to be able to reserve any time. Secondly, Mr. Hertz and I have had some conversations over the last few days regarding some documents that are marked confidential, and they're attached to his Supplemental Brief. We have waived confidentiality on those so that there is no reason to deal with this hearing or this oral argument in confidential session.