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Court Upholds Surface Transportation Board Decision Directing Koch Pipeline to Reduce Rates to Shippers

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the District of Columbia Circuit has upheld the Board's decision disallowing certain rate increases for the transportation of anhydrous ammonia by Koch Pipeline Company (Koch).

Under Section 15301 of Title 49, United States Code (49 U.S.C. 15301), the Board regulates the rates charged for pipeline transportation of commodities other than water, oil, or energy-related gases. In a decision issued on May 9, 2000, the Board found that rate increases taken by Koch on anhydrous ammonia shipments from Louisiana to the Midwest for CF Industries, Inc. (CF) and Farmland Industries, Inc. (Farmland) were unreasonable. The Board ordered Koch to reduce its rates to the pre-increase levels and to pay reparations to CF and Farmland.[FOOTNOTE 1: See Surface Transportation Board "News" release No. 00-22 (May 9, 2000).]

Koch challenged the Board's decision in court. First, it argued that the Board had incorrectly concluded that barge transportation of anhydrous ammonia did not provide a sufficient competitive alternative to hold rates to reasonable levels so as to make regulatory intervention unnecessary. Relying largely on the "market dominance" analysis that the Board makes in railroad rate cases, and alluding to general antitrust principles, the court found that the Board's conceptual approach was correct. The court also found that the Board's determination to credit certain shipper evidence over that presented by Koch was well within the agency's authority. Because it affirmed the Board's finding that Koch has market dominance over most of the movements at issue, the court agreed that it was appropriate for the Board to review the reasonableness of the rates.

Koch also argued that the Board's rate reasonableness analysis was flawed. Among other things, it challenged the Board's finding that the "revenue adequacy" analysis -- under which the Board determined whether the rate increases were needed to provide sufficient funds to cover Koch's costs and provide an adequate return on its investment -- should be based on the price that Koch paid to buy its system in 1988, rather than the presumably higher costs that Koch would incur if it replaced its system now. The court found that the Board had made a rational choice in concluding that "requiring captive pipeline shippers to provide in advance a revenue stream to pay for investments not yet made and assets that are not in place" would "put the cart before the horse."

In addition to the issues put before the court by Koch, CF and Farmland challenged the Board's denial of a request, filed two years after the case began, to broaden the case to consider whether the pre-increase rate levels were also too high. The court found it reasonable for the Board to decline to substantially expand the scope of the proceeding so late in the process.

The court's decision was issued Friday, July 27, 2001 in *CF Industries, Inc., et al. v. Surface Transportation Board,* Nos. 00-1219 et al. (D.C. Cir. July 27, 2001), and is available on the court's web site at **http://www.cadc.uscourts.gov.**

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