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February 28, 2006

Via Electronic Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

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Re: Docket No. NOR- 42096, Albemarle Corporation – Petition for Declaratory Order – Certain Rates and Practices of the Louisiana and North West Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is the Louisiana and North West Railroad Company's Reply to Albemarle Corporation's Petition for Declaratory Order.

Please contact me if you have any questions regarding this matter. Thank you.

Respectfully submitted,

Edward J. Fishman
Attorney for Louisiana and North West Railroad Company

cc: Martin W. Bercovici, Esq. (via e-mail and hand-delivery)

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. NOR-42096

ALBEMARLE CORPORATION
-- PETITION FOR DECLARATORY ORDER --
CERTAIN RATES AND PRACTICES OF THE LOUISIANA
AND NORTH WEST RAILROAD COMPANY

REPLY OF THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

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ATTORNEYS FOR THE LOUISIANA AND
NORTH WEST RAILROAD COMPANY

Dated: February 28, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. NOR-42096

**ALBEMARLE CORPORATION
-- PETITION FOR DECLARATORY ORDER --
CERTAIN RATES AND PRACTICES OF THE LOUISIANA
AND NORTH WEST RAILROAD COMPANY**

REPLY OF THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

The Louisiana and North West Railroad Company (“LNW”) respectfully submits this Reply in response to the Petition for Declaratory Order (“Petition”) filed by Albemarle Corporation (“Albemarle”) on February 1, 2006, as supplemented by Albemarle’s filing late last week of its First Amendment to Petition for Declaratory Order (collectively, the “Amended Petition”).¹ LNW respectfully urges the Board to deny the Amended Petition and to issue a decision confirming the validity of LNW’s existing tariff charges and practices relating to intraplant switching, storage and weighing that LNW provides at Albemarle’s South Plant.

¹ By decision dated February 17, 2006, the Board extended the time for the filing of LNW’s Reply until February 28, 2006. On February 23, 2006, and without prior notice to LNW’s counsel, Albemarle submitted a “First Amendment” to the Petition. While LNW believes Albemarle’s amendment gives LNW an additional 20 days to respond under 49 CFR § 1104.13, LNW hereby files its Reply to the Amended Petition but reserves the right to supplement its Reply and make any additional filings should Albemarle seek to further amend its Petition.

I. SUMMARY OF ARGUMENT

The Board does not have jurisdiction to regulate intraplant switching, storage and weighing charges and practices because LNW is not obligated to provide such services as part of its common carrier obligation. Even if the Board believes that it might have jurisdiction in certain circumstances to examine the reasonableness of intraplant switching, storage and weighing charges or practices, it would be precluded from doing so in this case because LNW does not have market dominance over the provision of these services to Albemarle (which has proven by its recent actions that it can perform intraplant switching, storage and weighing without using the services of LNW). The Board's regulatory intervention is unnecessary given the competitive alternatives available to Albemarle. Therefore, the Board should reject Albemarle's Amended Petition, confirm that the Board has no jurisdiction to regulate the charges and practices at issue, and direct Albemarle to pay the charges for such services that are set forth in LNW's existing tariff LNW-8002-E.

In addition, LNW strongly objects to Albemarle's attempt to initiate a stand-alone cost ("SAC") challenge to the reasonableness of LNW's intraplant switching, storage and weighing charges and practices under the guise of a declaratory order proceeding. Albemarle's attempt to raise a laundry list of questions for the Board to address does not mask the true objective of its petition, which is to challenge the reasonableness of LNW's intraplant switching, storage and weighing charges under the SAC guidelines. Albemarle's challenge is procedurally defective and should be rejected by the Board, even if the Board has jurisdiction, because Albemarle has not paid the \$102,000 filing fee required in a SAC proceeding. Albemarle's attempt to litigate a SAC case through a declaratory order proceeding would set a troubling precedent for the future.

II. FACTUAL BACKGROUND

A. **Relevant Parties**

LNW is a Class III shortline railroad based in Homer, Louisiana. LNW provides freight rail service for several shippers and receivers (including Albemarle) that are located on the 62.6 mile line that LNW operates between McNeil, Arkansas and Gibsland, Louisiana. LNW interchanges with the Union Pacific Railroad Company (“UP”) in McNeil and the Kansas City Southern Railway Company (“KCS”) in Gibsland. LNW and its predecessors have been providing rail service in this cross-border region between northwest Louisiana and southwest Arkansas since the late 19th Century.²

Albemarle is a publicly-traded, specialty chemicals manufacturer that serves more than 3400 customers in over 100 different countries. In the fourth quarter of 2005 alone, Albemarle’s worldwide net sales exceeded a record \$588 million.³ It operates a network of approximately 10 special chemical manufacturing and development facilities in North America, with dozens more scattered throughout South America, Europe, and Asia, and employs over 3700 people worldwide.⁴ One of those chemical manufacturing facilities is Albemarle’s South Plant, located 7 miles south of Magnolia, Arkansas. The South Plant uses chlorine and other raw materials shipped to the South Plant by rail to produce bromine, which is either sold to Albemarle customers or used by Albemarle to manufacture other bromine-related products. *See* Petition at 2.

² LNW’s immediate predecessor opened the rail line between Homer, Louisiana and Magnolia, Arkansas in 1898. LNW was formed in 1939 after its predecessor went into receivership.

³ *See* http://www.albemarle.com/Investor_information/.

⁴ *See* Albemarle’s 2004 Annual Report, available at <http://www.albemarle.com>.

B. LNW's Contributions to Albemarle's Operations at the South Plant

LNW has provided rail service to Albemarle's South Plant since the plant was built in the 1970's by the Bromet Company. Verified Statement of Gerald Hausman ("Hausman V.S."), attached hereto as Exhibit A, at 1. LNW facilitated the construction and operation of the South Plant by providing the previous owners (initially Bromet Company and then Ethyl Corporation) with contract rights to build, operate and maintain brine and natural gas pipelines under the LNW right-of-way in exchange for nominal annual payments. Hausman V.S. at 1. LNW also facilitated the expansion of the South Plant's capacity by entering into agreements with the prior owners to lease LNW tracks, or tracks built on LNW property, for the storage, switching and weighing of railcars containing hazardous chemicals used in or produced by the plant's operations. Hausman V.S. at 1.

Albemarle acquired the South Plant from the Ethyl Corporation in 1994. Albemarle has continued to benefit from the arrangements made between LNW and the prior owners without any increase in the annual track lease payments, or any additional protection for LNW from the increasing liability risks of repetitive switching and storage of Albemarle's hazardous materials on LNW property. Hausman V.S. at 1.

In recent years, LNW has transported approximately 1300 annual carloads of traffic in linehaul service between LNW's two Class I interchanges and the South Plant. Hausman V.S. at 2. Most of this traffic is inbound, and virtually all of the South Plant traffic (inbound and outbound) consists of chlorine, bromine and other chemicals that are hazardous materials under DOT regulations. Hausman V.S. at 2. LNW provides this common carrier service under linehaul rates that are negotiated with the suppliers of the inbound material and with Albemarle

on the outbound moves. Hausman V.S. at 2.⁵

In addition to linehaul service, LNW provides the South Plant with intraplant switching, weighing, and storage services at additional charges. Verified Statement of Aaron Clark ("Clark V.S."), attached hereto as Exhibit B, at 1. Albemarle's production process requires storage of various hazardous raw materials used in its operations. In addition, Albemarle often stores finished chemicals prior to shipment to its customers. Clark V.S. at 1. Albemarle does not have sufficient track capacity of its own at the South Plant to handle the inbound chemicals that it receives by rail and the outbound chemicals that it ships by rail. Clark V.S. at 1. Therefore, Albemarle leases LNW storage tracks, and also uses Albemarle storage tracks located on LNW property, to store up to 100 loaded and empty railcars owned or leased by Albemarle. Clark V.S. at 1.

These Albemarle railcars (often loaded with hazardous materials) are switched between the storage tracks and the plant switching tracks by LNW. Clark V.S. at 1-2. Some of these storage tracks are owned by LNW and located on the opposite side of the LNW mainline from the South Plant. Albemarle also relies on LNW to provide weighing services on a scale track that was built and paid for by Albemarle on LNW property. LNW switches cars back and forth between the Albemarle plant switching tracks and the storage and weighing tracks that are located on the opposite side of its mainline. Clark V.S. at 1.

Until recently, Albemarle did not have the equipment necessary to switch cars around its plant and therefore relied solely on LNW to move loads and empties between various switching

⁵ Although Albemarle technically does not negotiate the linehaul rates on inbound traffic, it clearly has the ability to change the mode by which raw materials are shipped to its facility. This is evidenced by the actions it took in October 2004 to pull approximately 250 annual carloads of caustic soda business away from LNW, which is discussed further below.

and storage tracks.⁶ On the days that it served the South Plant, LNW typically used a 3 or 4 person crew that spent up to 5 hours switching cars around the plant for Albemarle. LNW did not charge Albemarle for every intraplant switch that it performed while serving the plant. Clark V.S. at 2.

The transportation of hazardous materials, including chlorine, has obvious liability risks. The Norfolk Southern derailment in Graniteville, South Carolina in early 2005 that resulted in a release of chlorine gas and several deaths is but one example of the substantial risks involved in handling such materials. These risks are compounded when a railroad such as LNW engages in multiple handling of such hazardous materials as a result of the intraplant switching, storage and weighing services it provides for Albemarle. In addition, LNW takes significant additional risks when it allows Albemarle to store hazardous materials on LNW tracks and property. A single release of hazardous materials on LNW property or adjacent property has the potential to wipe out the assets of the railroad. Hausman V.S. at 3.⁷

The track lease arrangements between LNW and Albemarle are fixed at rental rates that over time have become below market. In addition, these track leases do not provide adequate protection to LNW for the increasing liability risks of handling hazardous materials on its tracks and property. The track leases continued to make economic sense to LNW until recently because of the volume of linehaul and intraplant switching service that LNW provided at the South Plant. Hausman V.S. at 2. However, over the last few years, Albemarle has shifted a significant portion of its transportation needs to truck, threatened to shift all of its remaining inbound traffic to truck, and significantly reduced the amount of intraplant switching and weighing that it has

⁶ Albemarle recently acquired a trackmobile to provide its own switching services on plant trackage that it can access without using the LNW mainline. Clark V.S. at 2.

⁷ Given these risks, LNW will not allow Albemarle to access the LNW mainline.

allowed LNW to perform at the South Plant.⁸ Hausman V.S. at 2. As a result, LNW has been forced to reassess the economic return on its track lease arrangements with Albemarle and the terms pursuant to which it provides intraplant switching and weighing services to Albemarle. Hausman V.S. at 2.

C. Albemarle Retaliates Against Modest Increase in Switching Charge

In the summer of 2004, LNW advised Albemarle that it would be increasing its charge for intraplant switching services at Albemarle's facility by ten percent (10%). The charge at the time was \$100 per car, which was lower than the \$150 per car that LNW charged other customers on its line for such services because of the volume of intraplant switching, weighing and linehaul service that LNW performed at the South Plant. Verified Statement of Galen White ("White V.S."), attached hereto as Exhibit C, at 1.

On or about August 1, 2004, LNW increased the applicable charge by 10% to \$110 per car through a non-signatory contract. White V.S., at 1. The non-signatory contract stated that it was governed by 49 U.S.C. § 10709 and would become binding on Albemarle upon acceptance by written notice "or by tender of switching or weighing request under its terms." See Non-Signatory Contract, attached hereto as Exhibit D. Albemarle continued to request intraplant switching services at the \$110 per car charge, thereby binding the parties to the terms of the non-signatory contract. White V.S., at 1.

LNW also advised Albemarle that it would be imposing an additional 10% increase (to \$121 per car) six months later because of rising fuel, insurance and labor costs. White V.S., at

⁸ Albemarle's October 2004 shift of its inbound caustic soda traffic from LNW to truck is discussed further below. Although Albemarle previously asked LNW to provide weighing services on both loaded and empty railcars at the South Plant, it stopped weighing empties some time ago and now asks LNW to perform weighing only every other week on loaded railcars. Hausman V.S. at 2.

1.⁹ In retaliation for this planned 10% increase, Albemarle notified LNW that it was taking approximately 250 annual carloads of inbound caustic soda traffic away from LNW and moving it to truck.¹⁰ White V.S. at 1. In October of 2005, LNW representatives arranged a meeting with Danny Wood, Albemarle's Supply Chain Manager for the South Plant, to see if LNW could win back the caustic soda business. At this meeting, the LNW representatives were told by Mr. Wood that Albemarle did not need LNW because Albemarle could truck all of its chemicals to the South Plant. Clark V.S. at 3. On November 23, 2005, LNW notified Albemarle in writing that LNW would exercise its right to terminate the track lease and pipeline agreements unless the parties reached a comprehensive agreement governing those property arrangements. Clark V.S. at 3. LNW also notified Albemarle that LNW would cease providing intraplant switching at the South Plant within 20 days unless the parties reached a contractual agreement regarding the terms and conditions governing such services. Clark V.S. at 3.

D. Albemarle Backs Out of Long-Term Contract Negotiations

In late November and early December 2005, the parties initiated discussions about entering into long-term contractual arrangements to govern (i) LNW's continued provision of intraplant switching and weighing services at Albemarle's South Plant, and (ii) Albemarle's continued lease of LNW's tracks and continued occupancy of LNW's right-of-way with its tracks and pipelines. Hausman V.S. at 2-3. LNW felt compelled to seek long-term contractual

⁹ Prior to the August 2004 increase, LNW had not increased its intraplant switching rate since 1996 despite significant increases in fuel, labor and insurance costs. White V.S. at 1, attaching November 4, 2004 letter from Rick Jany of LNW to Danny Wood of Albemarle. White V.S. at 1.

¹⁰ Albemarle had previously threatened to pull this traffic away from LNW but only carried out its threat after receiving confirmation from LNW of the planned increase in the intraplant switching rate to \$121 per car. White V.S. at 1. LNW has delivered only three carloads of caustic soda to the South Plant since October 2004 after averaging 250 carloads in the previous two years. Clark V.S. at 3.

commitments on these issues from Albemarle for several reasons. First, LNW was concerned about the significant risks posed by its repetitive switching and storing of Albemarle's hazardous materials on LNW trackage and right-of-way. Second, LNW believed that the indemnification provisions of the track lease agreements were outdated and did not adequately protect LNW from the catastrophic liability that it might face in connection with the release of hazardous materials on its property or under its control.¹¹ Third, given Albemarle's demonstrated ability to exercise economic self-help by shifting the caustic soda business to truck and the threat of additional shifts made by Mr. Wood, LNW had to reevaluate whether it was being fairly compensated for Albemarle's use of its property and intraplant switching and weighing services. *Hausman V.S.*, at 3.

On December 8, 2005, Justine MacDonald, Albemarle's Vice President of Supply Chain Management, met with LNW's President Gerald Hausman in Chicago, Illinois. *Hausman V.S.*, at 3. During that meeting, and contrary to Albemarle's current representations, LNW and Albemarle "agreed in principle" to a ten-year agreement governing LNW's continued provision of intraplant switching and other ancillary services at the South Plant, and continued lease of the LNW right-of-way and trackage, on mutually acceptable terms.¹² *Hausman V.S.* at 3. In fact, Ms. MacDonald agreed to the \$500 intraplant switching charge that Albemarle is now challenging in this proceeding. *Hausman V.S.* at 4.¹³

¹¹ Many of these agreements date back to the 1970's and 1980's without subsequent amendment.

¹² *See, e.g.*, Email from Thomas Foley to Justine MacDonald, December 21, 2005, attached as Exhibit 3 to the Petition. Albemarle's representatives had originally proposed terms of five, seven, or ten years for the agreement. *Hausman V.S.* at 3.

¹³ The proposed ten-year agreement included a sliding scale of intraplant switching charges based on the level of switching activity. The average charge would have been approximately \$500 based on the historic levels of intraplant switching that LNW performed at the South Plant. *Hausman V.S.* at 3-4.

However, despite no indications prior to or during that meeting that Ms. MacDonald lacked authority to negotiate on behalf of or bind Albemarle, Ms. MacDonald subsequently informed LNW that she had lacked "corporate authority" to bind Albemarle "for a term greater than five years." *Hausman V.S.*, at 4.¹⁴ LNW then offered Albemarle a five-year arrangement based on slightly higher rates given the shorter term, but Albemarle rejected this five-year offer as well. *Hausman V.S.*, at 4. The negotiations broke down at this point, particularly after Albemarle's CEO stated that he would rather buy out the LNW before agreeing to the deal that had been accepted by Ms. MacDonald. *Hausman V.S.*, at 4.

LNW Freight Tariff LNW 8002-E became effective on December 21, 2005, several weeks after the negotiations broke down and on the same day that the termination of the track lease and pipeline agreements became effective. *White V.S.* at 2. This tariff superseded the non-signatory contract and tariff (LNW 8002-D) that previously had governed the relationship between the parties on intraplant switching.¹⁵ *White V.S.* at 2. LNW also incorporated a per car storage charge into its tariff as a result of its cancellation of the storage track leases. The tariff establishes the intraplant switching charge for the Albemarle South Plant at \$500 per car based on a weekly minimum of 32 intraplant switches per week. The tariff establishes the charge to Albemarle for storing cars on LNW's tracks at \$1,000 per day or a fraction thereof, and the charge for weighing services at \$150-350 per car unless weighing is performed to determine a linehaul rate. *See* Tariff LNW-8002-E, attached hereto as Exhibit E.

¹⁴ The lack of authority claim by Albemarle is curious because Ms. MacDonald appears to be Albemarle's most senior management representative on transportation matters.

¹⁵ Although issued as a tariff, the intraplant switching and storage charges set forth in LNW-8002-E are applicable only at Albemarle's South Plant in Ethyl, Arkansas. LNW believes that if services under that tariff are requested by Albemarle (which was notified of the applicable switching charges as early as November 23, 2005) and provided by LNW, the tariff charges become effective and binding on Albemarle even though the Board does not have jurisdiction to regulate the reasonableness of such tariff charges.

E. Albemarle Obtains *Ex Parte* TRO Against LNW

On December 21, 2005, Albemarle obtained a temporary restraining order (“TRO”) against LNW on an *ex parte* basis from the Columbia County Circuit Court in Magnolia, Arkansas.¹⁶ The TRO, in violation of 49 U.S.C. § 10501, prevented LNW from enforcing the terms of its governing tariff.¹⁷ The TRO also prevented LNW from exercising its right to terminate the track lease and pipeline agreements with Albemarle. After LNW removed the state court action to federal court, Albemarle convinced the federal court to impose a preliminary injunction against LNW and to refer Albemarle’s challenge to the reasonableness of LNW’s intraplant switching, storage and weighing charges and practices to the Board.

F. Albemarle’s SAC Challenge to LNW’s Charges and Practices

Albemarle encourages the Board to consider its challenge to LNW’s intraplant switching, storage and weighing charges under the “constrained market pricing standard” and suggests use of the procedural schedule for SAC proceedings set forth in 49 C.F.R. § 1111.8. *See* Petition for Declaratory Order at 8. The voluminous discovery requests that Albemarle has served on LNW make it abundantly clear that Albemarle intends to pursue its challenge under the SAC methodology.

On February 6, 2006, Albemarle served one hundred and sixteen (116) document

¹⁶ Albemarle’s TRO petition was not served on LNW until two days after it was granted by the state court.

¹⁷ Section 10501 gives the Board exclusive jurisdiction over “transportation by rail carriers” and provides that the remedies set forth in the Interstate Commerce Act (49 U.S.C. 10101 et. seq., as amended) preempt the remedies provided under state or other federal law. Although the STB has exclusive jurisdiction over the activities of LNW that are integrally related to its provision of common carrier service to Albemarle. Therefore, the state court did not have authority to enjoin the effectiveness of those charges. Moreover, the STB does not have jurisdiction to regulate the reasonableness of its intraplant switching, storage and weighing charges and practices for the reasons set forth herein.

production requests and twenty-five (25) interrogatories on LNW.¹⁸ The bulk of these extensive requests seek information that is of possible utility only in a SAC proceeding and appear to have been patterned after discovery used in prior challenges to Class I coal rates. For example, Albemarle requested documents from LNW pertaining to gross ton-mileage data for “coal unit train” and “passenger traffic” (even though LNW does not engage in or allow any such business on its line), the “location of all microwave and land mobile radio towers serving LNW’s system in the SARR States,” and information about “grading construction activities undertaken at any time on any line segment of LNW’s system located in the SARR States.” *See* Discovery Requests at 18-20, 45-47.

Despite its apparent intent to pursue a SAC challenge, Albemarle has not paid the \$102,000 filing fee required under 49 C.F.R. § 1002.2(f)(56)(i)(governing formal complaints filed under the SAC coal rate guidelines alleging unlawful rates or practices of carriers under 10704(c)(1)) to initiate a rate reasonableness challenge under the SAC methodology. *See Letter from Martin W. Bercovici to Secretary Vernon A. Williams*, dated February 1, 2006, which indicates that Albemarle paid the \$1,000 filing fee associated with declaratory order petitions under 49 C.F.R. § 1002.2(f)(58)(i) to initiate this proceeding.¹⁹

¹⁸ A copy of the discovery requests that Albemarle served on LNW (the “Discovery Requests”) is attached hereto as Exhibit F in order to give the Board a sense of the expansive nature of these requests.

¹⁹ LNW will not expend the resources necessary to respond to these extensive, overbroad and largely irrelevant Discovery Requests until Albemarle properly files a SAC challenge by paying the required filing fee and the Board rules that the SAC methodology and procedural schedule is appropriate in this situation. *See* 49 C.F.R. § 1114.21(a) (“Parties may obtain discovery under this subpart regarding any matter, not privileged, *which is relevant to the subject matter involved in a proceeding* other than an informal proceeding.”); § 1111.8 (requiring complaint be properly filed in SAC proceeding before discovery period commences).

G. Albemarle Refuses To Abide By Terms of Previous Contract

Recently, Albemarle has begun to perform its own intraplant switching services over the switching tracks that it owns within the South Plant so that it does not have to pay LNW for these services. Clark V.S. at 2. LNW, which has historically provided all such services at the South Plant, initially threatened to stop providing intraplant switching service to Albemarle when it first learned of Albemarle's activity. Clark V.S. at 2.²⁰ Soon thereafter, LNW assured Albemarle that it will continue providing intraplant switching services to Albemarle even if Albemarle continued to do its own switching and that LNW would provide adequate notice to Albemarle before ceasing such services. Clark V.S. at 2.²¹

Albemarle claims that the terms of the non-signatory contract still govern intraplant switching by LNW at the South Plant. *See* Petition at 3-4. However, Albemarle has refused to pay LNW for all intraplant switching provided under that prior arrangement. Clark V.S. at 2. The non-signatory contract requires Albemarle to pay \$121 each time a "car is switched or reswitched, either empty or loaded." *See* Exhibit D, Section 9. Albemarle has refused to pay for \$17,666 in switch charges incurred under that contract as of January 20, 2006 and has refused to identify which switch charges it is disputing. Clark V.S. at 2 (attaching spreadsheet of unpaid charges).

²⁰ It is not exactly clear whether the preliminary injunction issued by the federal court adopted the TRO requirement that the parties abide by the status quo as of November 2005, when LNW provided all intraplant switching services at the South Plant. If it did, then Albemarle's own switching would violate the preliminary injunction.

²¹ The initiation of intraplant switching activity by Albemarle also raises serious safety considerations when LNW is providing switching service on adjacent tracks.

III. ARGUMENT

LNW respectfully requests that the Board reject Albemarle's Amended Petition as an impermissible challenge to LNW's intraplant switching, storage and weighing charges and practices for three reasons. First, the Board does not have jurisdiction to regulate intraplant switching, storage, and weighing charges and practices that LNW is not obligated to provide as part of its common carrier obligation. Second, even if the Board concludes that it might have jurisdiction over the reasonableness of intraplant switching, storage and weighing charges and practices, Albemarle cannot prove that LNW has market dominance over these services and therefore its challenge must fail. Third, Albemarle failed to pay the \$102,000 filing fee required for the SAC rate challenge that it seeks to initiate here and should not be allowed to litigate a SAC challenge through a declaratory order proceeding. For these reasons, the Board should reject the Amended Petition and in its decision confirm the validity of LNW's existing tariff with respect to its intraplant switching, storage and weighing charges and practices.

A. STB Lacks Jurisdiction To Regulate Charges and Practices At Issue

1. Section 10906 Precludes STB From Exercising Jurisdiction

The Board has jurisdiction over "transportation" by "rail carrier." *See* 49 U.S.C. § 10501(a)(1) & (2). However, the Board's regulatory authority expressly does not extend over operations on spur, industrial, switching, or side tracks. 49 U.S.C. § 10906. LNW's intraplant switching, storage and weighing operations over the switching, storage and side tracks on LNW property and on Albemarle property meet the clear and express language of section 10906, and are therefore exempt from the Board's regulatory authority.

The Board has noted that pickup and delivery service inside a facility performed by a common carrier ancillary to its linehaul service is an exempt switching operation under section

10906. *See Texas Central Business Lines Corporation – Operation Exemption – MidTexas International Center*, STB Finance Docket No. 33997, 2002 WL 31097635, n.4 (Board served September 20, 2002) (citing *Louisiana & Arkansas Railway v. Missouri Pacific Railroad*, 288 F.Supp. 320 (E.D.La. 1968)). The same scenario confronts the Board in this situation: Albemarle is complaining about LNW’s operations over and between intraplant switching, storage, and side tracks at or adjacent to Albemarle’s plant facility.

The fact that LNW must use a portion of its mainline track to move Albemarle cars from certain LNW storage and scale tracks located on one side of the mainline to the South Plant switching tracks located on the other side of the mainline does not convert LNW intraplant switching service into part of its linehaul operations. Albemarle instructs LNW to store and weigh cars on those LNW tracks because of Albemarle’s lack of track capacity within the plant itself.²² Albemarle’s lack of investment in adequate track capacity within its plant is not LNW’s problem, and does not compel LNW to provide additional services beyond its linehaul obligations.

In its Amended Petition, Albemarle asks whether LNW may terminate its intraplant switching services over the Albemarle and LNW storage, switch and side tracks without providing 20 days advance notice under 49 U.S.C. § 11101(c). *See* First Amendment at 3, Question 11. Pursuant to Section 10906, the answer is emphatically “yes.” Under 49 U.S.C. § 10906, “[r]ail carriers ... can abandon or discontinue service over side tracks without prior authorization.” *Union Pacific Railroad Co. v. Coast Packing Co.*, 236 F.Supp.2d 1130, 1135 (C.D. Cal. 2002). Indeed, “the [Board] cannot require a carrier to provide service over side

²² *See* Petition at 2 (“Given the configuration of the plant, switching both to and from the storage tracks and also on the plant lead tracks requires access to the LNW mainline”).

tracks or award damages for "failure to provide service over a spur or side track" and "lacks jurisdiction over § 11101(a) claims involving side tracks." *Id.* (citations omitted).²³

2. Challenged Activity Extends Beyond Common Carrier Obligation

A common carrier discharges its duty following the delivery of cars after linehaul movements. It is the "responsibility of the carrier, as part of the transportation service covered by the linehaul rate, to 'deliver' the goods by placing them in such a position as to make them accessible to the consignee." *Sec'y of Agriculture v. U.S.*, 347 U.S. 645, 647 (1954). In the case of private sidings, plant track and switch track, "the railroad's job ends when it has placed the car on the consignee's siding." *Id.*; see also *U.S. v. American Sheet & Tin Plate Co.*, 301 U.S. 402, 410 (1937) (affirming ICC finding that plant spotting service is not part of linehaul movement); *U.S. v. Wabash Co.*, 321 U.S. 403, 409 (1944) (affirming ICC finding that service between interchange tracks and points of loading and unloading is plant service for which carrier can impose additional charges).

Thus, the linehaul obligation of a common carrier is to "provide a freight car and deliver it to a reasonably convenient place within the industrial plant area where it can be loaded or unloaded." *Mobil Chemical Company – Petition for Declaratory Order – Applicability of Switching Charges – Privately-Owned Hopper Cars*, 362 I.C.C. 8, *12 (I.C.C. served October 18, 1979) The carrier is not required to render service "beyond a reasonable delivery point, under its linehaul rates." *Id.*

²³ Similarly, LNW may stop providing intraplant switching services as a result of Albemarle's own performance of these services because of the Board's lack of jurisdiction. See First Amendment at 3, Question 12. LNW has informed Albemarle that it would not cease such services without providing adequate notice to Albemarle, but LNW is not obligated to provide such notice.

LNW fulfills its common carrier duties when it delivers cars to Albemarle's facility as part of the linehaul movements. Subsequent intraplant switching, storage, or weighing activities on Albemarle's private tracks, or on LNW switch and storage tracks that were previously leased to Albemarle, are ancillary services for which LNW charges a separate, additional rate, and over which the Board does not have jurisdiction.²⁴

B. Albemarle Cannot Establish Market Dominance

Albemarle's attempt to challenge the reasonableness of LNW's intraplant switching, storage and weighing charges under 49 U.S.C. § 10701 and 10702²⁵ must fail because Albemarle will be unable to show that LNW has market dominance over these services at the South Plant. The Board has made clear that it is "authorized to consider the reasonableness of a challenged rate only if the carrier has market dominance over the traffic involved." *See, e.g., Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Co.*, Docket No. 42056 (STB served March 21, 2003) ("*Texas Municipal*") at 8-9 (citing 49 U.S.C. §§ 10701(d)(1), 10707(b)). As the Board explained in *Texas Municipal*, market dominance is "an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies." *Id.* (citing 49 U.S.C. 10707(a)).

It is already clear that Albemarle cannot show the requisite absence of effective competition in order to establish market dominance. As previously noted, Albemarle recently shifted approximately 250 annual carloads of inbound rail traffic to truck (Clark V.S., at 1) and

²⁴ The foregoing discussion about the extent of LNW's common carrier obligation is framed in terms of inbound rail service, which accounts for the majority of linehaul service that LNW provides to Albemarle. The same logic applies in the outbound context because the common carrier obligation does not begin until the car being shipped is released by the shipper and picked up by the originating carrier for subsequent linehaul movement.

²⁵ *See* Petition at 7-8, Questions 1-2 (challenging reasonableness of intraplant switching charges), 6 (challenging reasonableness of storage charges), and 8 (challenging reasonableness of weighing charges).

admitted that it could shift all inbound traffic away from rail.²⁶ More importantly, Albemarle can use its own employees or a third party to perform intraplant switching services, as it has recently demonstrated. Clark V.S., at 1-2. The same holds true for the storage and weighing services that LNW previously performed for Albemarle.²⁷ These facts, and Albemarle's own representations, demonstrate that LNW does not have market dominance of any kind over intraplant switching, storage and weighing at Albemarle's South Plant. This presence of effective competition for LNW's ancillary services precludes a finding of market dominance that is necessary to challenge the reasonableness of LNW's rates.

C. The Improperly Filed SAC Challenge Must Be Rejected

Albemarle should not be allowed to challenge the reasonableness of LNW's intraplant switching, storage and weighing charges and practices under the SAC methodology without paying the \$102,000 filing fee necessary to compensate the Board for the significant resources required in such a proceeding. The Board should not condone Albemarle's attempt to initiate a SAC challenge through a declaratory order proceeding emanating from an *ex parte* TRO issued by a state court, given the troubling precedent this would establish in other SAC proceedings. The manner in which Albemarle has sought to challenge the reasonableness of the charges and practices at issue strongly suggests that Albemarle intends to use the lengthy, onerous and expensive requirements of a SAC proceeding as leverage in its dispute with LNW (as evidenced

²⁶ See Clark V.S. at 3 (citing threat made by Mr. Wood); Albemarle's Petition for Temporary Restraining Order and Other Injunction Relief, filed January 6, 2006, the relevant portion of which is attached hereto as Exhibit G, at ¶ 66 ("...Albemarle will be forced to ship certain hazardous materials ..., including chlorine, in tanker trucks across Columbia and Union counties.").

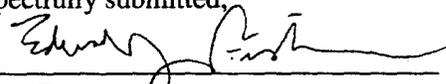
²⁷ Albemarle has been using its own switching tracks to store cars in order to avoid paying LNW's storage charges under the existing tariff. Clark V.S. at 2. Similarly, Albemarle could use its own employees or a third party to weigh railcars on its weighing track.

by the voluminous discovery requests that Albemarle served on LNW).²⁸

V. CONCLUSION

For the foregoing reasons, LNW respectfully requests that the Board issue a decision rejecting the Amended Petition and confirming that LNW's intraplant switching, storage and weighing charges and practices as set forth in Tariff LNW-8002-E became effective as of December 21, 2005.²⁹

Respectfully submitted,

By: 

Edward J. Fishman
Brendon P. Fowler
Kirkpatrick & Lockhart
Nicholson Graham LLP
1601 K Street NW
Washington, DC 20006
(202) 778-9000

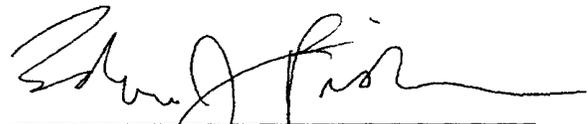
²⁸ Albemarle also has failed to justify its request to use the SAC guidelines to assess the reasonableness of the charges and practices at issue, even assuming the Board has jurisdiction to regulate such charges and practices. It is not at all clear whether the SAC guidelines would be the appropriate methodology, and the Board should give the parties an opportunity to brief this issue if the Board determines that it has jurisdiction over the rate claims made by Albemarle.

²⁹ If the Board decides to initiate a declaratory order or other proceeding in this matter, it should define the scope of the proceeding to assist the parties in identifying what information might be relevant for discovery purposes.

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2006 a copy of the foregoing Reply was served by hand delivery and electronic mail to:

Martin W. Bercovici, Esq.
Keller & Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001
(2002) 434-4100



Edward J. Fishman

EXHIBIT A

VERIFIED STATEMENT

OF

GERALD HAUSMAN

My name is Gerald Hausman. I am the President of Louisiana and North West Railroad Company ("LNW").

LNW is a shortline railroad based in Homer, Louisiana, which services a number of customers along its approximately 62.6 mile line. LNW interchanges with the Union Pacific Railroad Company and the Kansas City Southern Railway. In recent months, LNW has been engaged in negotiations with one of those customers, Albemarle Corporation ("Albemarle"), about LNW services at Albemarle's South Plant in Magnolia, Arkansas.

LNW has provided rail service to Albemarle's South Plant since the plant was built in the 1970's by the Bromet Company. LNW facilitated the construction and operation of the plant by providing the previous owners (initially Bromet Company and then Ethyl Corporation) with contract rights to build, operate and maintain brine and natural gas pipelines under the LNW right-of-way in exchange for nominal annual payments. LNW also facilitated the expansion of the South Plant's capacity by entering into agreements with the prior owners to lease LNW tracks, or tracks built on LNW property, for the storage, switching and weighing of railcars containing hazardous chemicals used in or produced by the plant's operations. Albemarle acquired the South Plant from the Ethyl Corporation in 1994. Albemarle has continued to benefit from the arrangements made between LNW and the prior owners without any increase in the annual payments or any additional protection for LNW from the increasing liability risks of repetitive switching and storing of hazardous materials.

In recent years, LNW has transported approximately 1300 annual carloads of traffic in line-haul service between LNW's Class I interchanges and the South Plant. Most of this traffic is inbound, and virtually all of the South Plant traffic (inbound and outbound) consists of chlorine, bromine and other chemicals that qualify as hazardous materials under DOT regulations. LNW provides this common carrier service under linehaul rates that are negotiated with the shippers of the inbound material and with Albemarle on the outbound moves.

These track lease arrangements, although fixed at rental rates that over time have become below market, and despite the lack of adequate protection to LNW for the increasing risks of handling hazardous materials on its track and property, continued to make economic sense to LNW until recently because of the volume of linehaul and intraplant switching service that LNW provided at the South Plant. However, over the last few years, Albemarle has shifted a significant portion of its transportation needs to truck, threatened to shift all of its remaining inbound traffic to truck, and significantly reduced the amount of switching and weighing that it has allowed LNW to perform at the South Plant.

In October 2004, Albemarle shifted its inbound caustic soda traffic from LNW to truck. Although Albemarle previously asked LNW to provide weighing services on both loaded and empty railcars at the South Plant, it stopped weighing empties some time ago and now asks LNW to perform weighing only every other week on loaded railcars. As a result of the actions by Albemarle, LNW has been forced to reassess the economic return on its underlying track lease arrangements with Albemarle and the terms pursuant to which it provides intraplant switching and weighing services to Albemarle.

In late November and early December 2005, the parties initiated discussions about entering into long-term contractual arrangements to govern (i) LNW's continued provision of

intraplant switching and weighing services at Albemarle's South Plant, and (ii) Albemarle's continued lease of LNW's tracks and continued occupancy of LNW's right of way with its tracks and pipelines. LNW felt compelled to seek long-term contractual commitments on these issues from Albemarle for several reasons. First, LNW was concerned about the significant risks posed by its repetitive switching and storing of Albemarle's hazardous materials on LNW trackage and right of way. Second, LNW believed that the indemnification provisions of the track lease agreements were outdated and did not adequately protect LNW from the catastrophic liability that it might face in connection with the release of hazardous materials on its property or under its control. A single release of hazardous materials on LNW property or adjacent property has the potential to wipe out the assets of the railroad. Third, given Albemarle's demonstrated ability to exercise economic self-help by shifting the caustic soda business to truck and the threat of additional shifts made by Mr. Wood, LNW felt that it had to reevaluate whether it was being fairly compensated for Albemarle's use of its property and intraplant switching and weighing services.

On December 8, 2005, Justine MacDonald (Albemarle's Vice President of Supply Chain Management) and an Albemarle lawyer met with me and other LNW representatives in Chicago, Illinois. During that meeting, and contrary to Albemarle's current representations, LNW and Albemarle agreed in principle to a ten-year agreement governing LNW's continued provision of intraplant switching and other ancillary services at the South Plant, and continued lease of the LNW right of way and other property, on mutually acceptable terms. Albemarle's representatives had offered terms of five, seven, or ten years for the agreement. The proposed ten-year agreement included a sliding scale of intraplant switching charges based on the level of switching activity. The average charge would have been approximately \$500 based on the

historic levels of intraplant switching that LNW performed at the South Plant. Ms. MacDonald agreed to the intraplant switching charges that Albemarle is now challenging in this proceeding.

However, despite no indications prior to or during that meeting that Ms. MacDonald lacked authority to negotiate on behalf of or bind Albemarle, Ms. Macdonald subsequently informed LNW that she lacked "corporate authority" to bind Albemarle "for a term greater than five years." LNW then offered Albemarle a five-year arrangement based on slightly higher rates given the shorter term, but Albemarle rejected this five-year offer as well. The negotiations broke down at this point, particularly after Albemarle's CEO stated that he would rather buy out the LNW before agreeing to the deal that had been accepted by Ms. MacDonald.

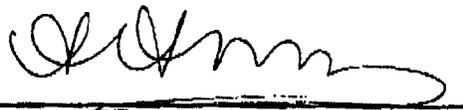
VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Gerald Hausman, being duly sworn, deposes and says that he is President of Louisiana and North West Railroad Company, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief.


Gerald Hausman

Subscribed and sworn to before by Gerald Hausman this 27th day of February, 2006.


Notary Public

My Commission Expires:

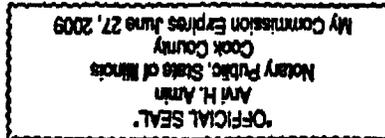


EXHIBIT B

VERIFIED STATEMENT

OF

AARON CLARK

My name is Aaron Clark. I am the Vice-President and General Manager of Louisiana and North West Railroad Company ("LNW").

One of LNW's customers is Albemarle Corporation ("Albemarle") at its South Plant facility in Magnolia, Arkansas. In recent years, LNW has moved approximately 1300 carloads per year over its line to and from the South Plant. Most of the carloads have contained hazardous chemicals, such as chlorine and bromine products.

In addition to line-haul service, LNW provides the South Plant with intraplant switching, weighing, and storage services at additional charges. Albemarle's production process requires storage of various hazardous raw materials used in its operations. In addition, Albemarle often stores finished chemicals prior to shipment to its customers. Albemarle does not have sufficient track capacity of its own at the South Plant to handle the inbound chemicals that it receives by rail and the outbound chemicals that it ships by rail, as each chemical typically must be unloaded on certain dedicated switching tracks within the facility. Therefore, Albemarle leases LNW storage tracks, and also uses Albemarle storage tracks located on LNW property, to store up to 100 loaded or empty railcars owned or leased by Albemarle. Albemarle also relies on LNW to provide weighing services on a scale track that was built and paid for by Albemarle on LNW property. LNW switches cars back and forth between the Albemarle plant switching tracks and storage and weighing tracks (some of which storage tracks are located on the opposite side of the LNW main line).

Until recently, Albemarle did not have the equipment necessary to switch cars around its plant and therefore relied solely on LNW to move loads and empties between various switching and storage tracks. On the days that it served the South Plant, LNW typically used a three or four person crew that spent up to five hours switching cars around the plant for Albemarle. LNW did not charge Albemarle for every intraplant switch that it performed while serving the plant.

Recently, Albemarle has begun to perform its own intraplant switching services over the switching tracks that it owns within the South Plant so that it does not have to pay LNW for these services. Albemarle uses a trackmobile that it acquired to provide switching services on plant trackage that it can access without using the LNW mainline. LNW, which has historically provided all such services at the South Plant, initially threatened to stop providing intraplant switch service to Albemarle when it first learned of Albemarle's activity. Soon thereafter, however, LNW assured Albemarle that it will continue providing intraplant switching services to Albemarle even if Albemarle continued to do its own switching and that LNW would provide adequate notice to Albemarle before ceasing such services. Another recent communication to this effect is attached hereto as Attachment A. Albemarle has also been using its own switching tracks to store cars in order to avoid paying LNW's storage charges under the existing tariff.

Despite its position that the terms of a non-signatory contract still govern intraplant switching by LNW at the South Plant, Albemarle has refused to pay LNW for intraplant switching charges incurred under that prior arrangement. The non-signatory contract requires Albemarle to pay \$121 each time a "car is switched or reswitched, either empty or loaded." However, Albemarle has refused to pay for \$17,666 in switch charges incurred as of January 20, 2006 and has refused to identify which switch charges it is disputing. *See Albemarle*

Corporation Switching Charges spreadsheet, Train Switches and Other Switches column, attached hereto as Attachment B.

Albemarle has also been able to shift much of its traffic to trucking service. For example, in 2003 and 2004 LNW transported approximately 250 cars of caustic soda to the South Plant, but by October of 2004 Albemarle had shifted substantially all of that traffic to truck. Since October of 2004, LNW has transported only three (3) cars of caustic soda to the South Plant.

In October of 2005, LNW representatives arranged a meeting with Danny Wood, Albemarle's Supply Chain Manager for the South Plant, to see if LNW could win back the caustic soda business. At this meeting, the LNW representatives were told by Mr. Wood that Albemarle did not need LNW because Albemarle could truck all of its chemicals to the South Plant. On November 23, 2005, LNW notified Albemarle in writing that LNW would exercise its right to terminate the track lease and pipeline agreements unless the parties reached a comprehensive agreement governing those property arrangements. LNW also notified Albemarle that LNW would cease providing intraplant switching at the South Plant within 20 days unless the parties reached a contractual agreement regarding the terms and conditions governing such services.

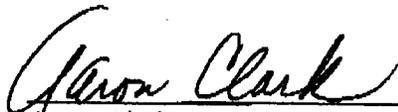
VERIFICATION

STATE OF LOUISIANA)

) SS

PARISH)
~~COUNTY~~ OF CLAIBORNE)

Aaron Clark, being duly sworn, deposes and says that he is Vice-President and General Manager of the Louisiana and North West Railroad Company, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief.



Aaron Clark

Subscribed and sworn to before by Aaron Clark this 27 day of February, 2006.



Notary Public
ELIZABETH FRIAR
NOTARY #005070



My Commission Expires:

With Life

ATTACHMENT A

-----Original Message-----

From: Aaron Clark [mailto:alclarklnw@bellsouth.net]

Sent: Tuesday, February 28, 2006 8:47 AM

To: 'Danny_Wood@albemarle.com'

Subject: Switching at Albemarle

Danny,

We will continue to provide switching services to Albemarle, and in the event that we decide in the future to stop providing such switching services, we will provide Albemarle with at least 20 days advance notice.

Aaron

ATTACHMENT B

Albemarle Corporation Switching Charges

Date	Invoice #	Cars Invoiced @ \$500.00		Cars Paid @ \$121		Invoice Balance Due	Unpaid Switching Charges		
		# of Cars	Amount	# of Cars	Amount		Minimum Switches	Train Switches	Other Switches
12/15/05	125S200	15	7,500.00	15	1,815.00	5,685.00	-	-	-
12/16/05	125s201	8	4,000.00	6	726.00	3,274.00	2	-	-
12/19/05	125s202	20	10,000.00	20	2,420.00	7,580.00	-	-	-
12/19/05	125s203	13	6,500.00	13	1,573.00	4,927.00	-	-	-
12/20/05	125s204	8	4,000.00	0	0.00	4,000.00	8	-	-
12/22/05	125s205	20	10,000.00	20	2,420.00	7,580.00	-	-	-
12/22/05	125s206	5	2,500.00	5	605.00	1,895.00	-	-	-
12/23/05	125s207	8	4,000.00	2	242.00	3,758.00	6	-	-
12/28/05	125s208	18	9,000.00	8	968.00	8,032.00	-	10	-
12/28/05	125s209	8	4,000.00	2	242.00	3,758.00	2	4	-
12/29/05	125s210	12	6,000.00	6	726.00	5,274.00	-	6	-
12/30/05	125s211	10	5,000.00	0	0.00	5,000.00	-	10	-
12/31/05	125s212	13	6,500.00	11	1,331.00	5,169.00	-	2	-
01/03/06	016S001	17	8,500.00	10	1,210.00	7,290.00	-	7	-
01/05/06	016S002	20	10,000.00	18	2,178.00	7,822.00	-	2	-
01/05/06	016S003	10	5,000.00	10	1,210.00	3,790.00	-	-	-
01/06/06	016S004	11	5,500.00	11	1,331.00	4,169.00	-	-	-
01/09/06	016S005	14	7,000.00	9	1,089.00	5,911.00	-	5	-
01/10/06	016S006	10	5,000.00	3	363.00	4,637.00	-	7	-
01/13/06	016S007	20	10,000.00	8	968.00	9,032.00	-	3	9
01/13/06	016S008	12	6,000.00	4	484.00	5,516.00	-	-	8
01/13/06	016S009	20	10,000.00	11	1,331.00	8,669.00	-	2	7
01/13/06	016S010	15	7,500.00	7	847.00	6,653.00	-	-	8
01/17/06	016S011	20	10,000.00	13	1,573.00	8,427.00	-	4	3
01/17/06	016S012	14	7,000.00	0	0.00	7,000.00	-	-	14
01/18/06	016S013	20	10,000.00	9	1,089.00	8,911.00	-	6	5
01/17/06	016S014	17	8,500.00	1	121.00	8,379.00	-	-	16
01/20/06	016S015	20	10,000.00	14	1,694.00	8,306.00	-	3	3
01/20/06	016S016	8	4,000.00	6	726.00	3,274.00	-	-	2
01/20/06	016S017	9	4,500.00	0	0.00	4,500.00	Unpaid as of 02/23/06		
01/24/06	016S018	8	4,000.00	0	0.00	4,000.00	Unpaid as of 02/23/06		
01/24/06	016S019	16	8,000.00	0	0.00	8,000.00	Unpaid as of 02/23/06		
01/27/06	016S020	20	10,000.00	0	0.00	10,000.00	Unpaid as of 02/23/06		
01/27/06	016S021	10	5,000.00	0	0.00	5,000.00	Unpaid as of 02/23/06		
01/27/06	016S022	20	10,000.00	0	0.00	10,000.00	Unpaid as of 02/23/06		
01/27/06	016S023	7	3,500.00	0	0.00	3,500.00	Unpaid as of 02/23/06		
01/31/06	016S024	20	10,000.00	0	0.00	10,000.00	Unpaid as of 02/23/06		
01/31/06	016S025	13	6,500.00	0	0.00	6,500.00	Unpaid as of 02/23/06		
01/31/06	016S026	15	7,500.00	0	0.00	7,500.00	Unpaid as of 02/23/06		
Totals		544	272,000.00	242	29,282.00	242,718.00	18	71	75

Unpaid Minimum Switches - Switch charges due to Albemarle not switching a minimum of 8 cars

Unpaid Train Switches - Switch charges for cars that were switched out of the train

Unpaid Other Switches - Switch charges for cars that were switched to have access to the actual car
Albemarle requested we switch

EXHIBIT C

VERIFIED STATEMENT

OF

GALEN WHITE

My name is Galen White. I am the Marketing Manager of the Louisiana and North West Railroad Company ("LNW").

In the summer of 2004, LNW advised Albemarle that it would be increasing its charge for intraplant switching services at Albemarle's South Plant facility by ten percent (10%). The charge at the time was \$100 per car, which was lower than the \$150 per car that LNW charged other customers on its line for such services because of the volume of intraplant switching, weighing and linehaul service that LNW performed at the South Plant. On or about August 1, 2004, LNW increased the applicable charge by 10% to \$110 per car through a non-signatory contract. Albemarle continued to request intraplant switching services at the \$110 per car charge, thereby binding the parties to the terms of the non-signatory contract. Prior to the August 2004 increase, LNW had not increased its intraplant switching rate since 1996 despite significant increases in fuel, labor, and insurance costs. See Letter from Rick Jany to Danny Wood, dated November 4, 2004, attached hereto as Attachment A.

LNW also advised Albemarle that it would be imposing an additional 10% increase (to \$121 per car) six months later because of rising fuel, insurance and labor costs. In retaliation for this planned 10% increase, Albemarle shifted 250 annual carloads of inbound caustic soda traffic away from LNW and moved it to truck. Albemarle had threatened to pull this traffic away from LNW previously, but carried out its threat when LNW would not cancel the additional increase.

LNW Freight Tariff LNW 8002-E became effective on December 21, 2005, several weeks after the negotiations broke down between Albemarle and LNW and on the same day that

LNW's termination of the track lease and pipeline agreements became effective. This tariff superseded the non-signatory contract and tariff (LNW 8002-D) that previously had governed the relationship between the parties on intraplant switching. LNW also incorporated a per car storage charge into its tariff as a result of its cancellation of the storage track leases. The tariff establishes the intraplant switching charge for the Albemarle South Plant at \$500 per car based on a weekly minimum of 32 intraplant switches per week. LNW also incorporated a per car storage charge into its tariff.

ATTACHMENT A

**THE LOUISIANA AND NORTH WEST
RAILROAD COMPANY**

"Since 1888"

Rick Jany
Vice-President & Gen. Mgr.

P. O. Box 60
304 West Main Street
Homer, LA 71040

Phone: 318-927-2031
Fax: 318-927-2540
Email: RickJany@bellsouth.net

*MSG about
switching costs*

November 04, 2004

Mr. Danny Wood
Albemarle Corporation
P.O. Box 1890
Magnolia, AR 71753

Danny,

As you know LNW implemented a switching charge increase of 10% effective August 1st, 2004, and intend to increase this rate by another 10% effective March 1st, 2005. When we met, you stated you wanted some kind of justification for these increases. As I explained, these rates have not been increased since 1996. Most of our costs have increased over the last eight years, several of which have increased significantly. Our three largest expenses on the railroad continue to be labor, fuel, and insurance, which have all increased significantly. I will explain how each of these items has increased since 1998, which is the last year that we have records. As you know most of our previous records were lost in a fire that destroyed our general office building in July of 1998.

Labor:

Between 1996 and 2004 our crews have received a 15.1% pay increase plus a one time bonus of 3% of their 1998 wages.

Fuel:

In July of 1998 we were paying \$0.4025 per gallon for diesel fuel and in February of 2004 we paid \$1.019 per gallon. This is an increase of 153%, and since February 2004 our fuel prices have risen as high as \$1.55 per gallon.

Insurance:

In 1998, we were paying an average of \$555.20 per employee for health insurance and in 2004 that rate has risen to \$1,095.36. This is a 97% increase in Health insurance. Our liability insurance has increased 119% between 1998 and 2004. Our property insurance has increased 85% during this period and our crime insurance has increased 86% during this same period. Overall our total insurance costs have increased approximately 102% between 1998 and 2004.

As I said all of our expenses have increased but the big dollar items are the ones that I have outlined above. I hope this further substantiates our necessity to raise our rates. We have to cover our expenses and provide an adequate rate of return to our owner. We fully intend to continue providing a quality service, and meet all the expectations of your company.

Sincerely,



Rick Jany
V.P. & G.M.

cc: John McWeeney
Kenny Kendrick

EXHIBIT D

The Louisiana and North West Railroad Co.

NON-SIGNATORY CONTRACT

1. **ISSUING CARRIER:** The Louisiana and North West Railroad Company
2. **CONFIDENTIAL:** Yes
3. **CONTRACT NUMBER:** LNW C-0180
4. **ISSUED FOR ACCOUNT:** Albemarle Corporation
5. **CANCELS:** N/A
6. **EFFECTIVE DATE:** August 1, 2004
7. **EXPIRATION DATE:** **EVERGREEN** The term of this contract is from the effective date and does not expire unless either party gives notice of cancellation to the other.
8. **APPLICATION:** Applies on Switching and Weighing all commodities for account Albemarle Corporation.
9. **RATES: SWITCHING:** Upon initial arrival at industry, cars placed on side track, storage track, or at warehouse, elevator, or other industry or location served by LNW, shall constitute delivery of cars for loading or unloading.

When a car is switched or reswitched, either empty or loaded, at request of either consignor or consignee, or agent thereof, the following charges will be assessed each time car is switched:

\$110.00 per car

Switching Rate will increase to **\$121.00 per car** effective February 1, 2005.

WEIGHING AND REWEIGHING: When weights are obtained for the assessment of freight charges, no charge will be made by the carrier for the service.

When a car is weighed or reweighed, either empty or loaded, at the request of either consignor or consignee, or agent thereof, the following charge will be assessed.

\$50.00 per car

10. **INCREASE OF RATES:** Upon thirty (30) days notice and after consultation with Albemarle Corporation, rates may be increased after February 1, 2005.
11. **DIVISIONS:** 100% of charges accrue to the LNW.
12. **MINIMUM WEIGHT:** N/A, per car rate
13. **EQUIPMENT:** All equipment
14. **ROUTE:** LNW

15. **SPECIAL CONDITIONS:** This CONTRACT is made pursuant to 49 U.S.C. 10709 and shall become binding on the parties upon acceptance by the shipper named above. Shipper may accept this contract either by written notice, or by tender of switching or weighing request under its terms.

This Contract does not expire unless cancelled, superceded, or amended upon notice given by either participant.

16. **ISSUE DATE:** August 31, 2004

17. **ISSUED BY:** Galen White
Marketing Manager
The Louisiana and North West Railroad Co.
P. O. Box 60
Homer, LA 71040

-END-

EXHIBIT E

FT LNW 8002-E
(Cancels FT LNW 8002-D)

THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

FREIGHT TARIFF LNW 8002-E (Cancels Freight Tariff LNW 8002-D)

RULES AND CHARGES

GOVERNING

SWITCHING

ALSO

WEIGHING

AT ALL STATIONS ON

THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

This tariff is also governed by LNW General Demurrage Rules and Charges Tariff LNW 6000, supplements thereto or successive issues thereof.

ISSUED: December 1, 2005

EFFECTIVE: December 21, 2005

ISSUED BY:

G. L. White
Marketing Manager
P. O. Box 68
364 West Main Street
Homer, LA 71040

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

FREIGHT TARIFF LNW 8002-E

RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS - GENERAL	SECTION 1 SWITCHING
<p align="center">ITEM 10</p> <p align="center">SUPPLEMENTS AND REISSUES</p> <p>When reference is made in this tariff or supplements, to other publications for rates or other information, it includes Supplements thereto as successive issues thereof.</p> <p>When reference is made in this tariff to items, it includes "reissues" of such items.</p>	<p align="center">ITEM 100</p> <p align="center">SWITCHING</p> <p align="center"><i>(Applicable on all commodities, vehicles and/or empty)</i></p> <p>The LNW will switch all cars originating on or destined to tracks located within Alabama's plant facility located at Edley, AL, at a charge of \$500.00 per car, subject to a minimum eight (8) cars per day, minimum of four (4) days per week (minimum \$16,000.00 per week). (1)</p>
<p align="center">ITEM 20</p> <p align="center">METHOD OF CANCELING ITEMS</p> <p>As this tariff is supplemented, numbered items with letters and/or codes correspondingly numbered items in the original tariff or in a prior supplement. Later codes will be used in alphabetical sequence starting with A. Example: Item 100-A cancels Item 100 and Item 200-B cancels Item 200-A in a prior supplement which in fact cancelled Item 200.</p>	<p align="center">ITEM 110</p> <p align="center">(A)</p> <p align="center">SWITCHING TO AND FROM HOLD TRACK</p> <p>The LNW will assess charge of \$500.00 per car, loaded or empty, from movement of car to or from hold tracks (See Item 115).</p>
	<p align="center">ITEM 115</p> <p align="center">(A)</p> <p align="center">HOLD CHARGE</p> <p>Cars, loaded or empty, held on tracks of the LNW at the request of consignee or consignor, or as a result of any other condition attributable to the receiver or consignor, will be subject to a hold charge of \$1000.00 per car, per day, or fraction of a day, computed from time car is first held until car is released from hold.</p>
	<p align="center">SECTION 3</p> <p align="center">WEIGHING AND REWEIGHING</p> <p align="center">ITEM 200</p> <p align="center">WEIGHING AND REWEIGHING</p> <p>When weights are obtained for the assessment of freight charges on outbound or on line haul traffic, no charge will be made by the LNW for the service.</p> <p>When weights are obtained at the request of consignee, consignor, any agent thereof, or foreign rail carrier, either empty or loaded, and cars to be weighed or reweighed do not move out of yards or involve a backhaul, a charge of \$150.00 per car will be assessed.</p> <p>When weights are obtained at the request of consignee, consignor, any agent thereof, or foreign rail carrier, either empty or loaded, and cars to be weighed or reweighed must move out of yards or involve a backhaul, a charge of \$350.00 per car will be assessed.</p>
<p align="center"><i>For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.</i></p>	

FREIGHT TARIFF LNW 8002-E

EXPLANATION OF ABBREVIATION AND REFERENCE MARKS	
LNW - The Louisiana and North West Railroad Company (A) - Addition (R) - Reduction/Decrease (I) - Increase (NC) - No change	
For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.	

EXHIBIT F

Before the
SURFACE TRANSPORTATION BOARD
Washington, DC 20423

ALBEMARLE CORPORATION—PETITION)	
FOR DECLARATORY ORDER—CERTAIN)	Docket No.
RATES AND PRACTICES OF THE LOUISIANA)	NOR-42096
AND NORTH WEST RAILROAD COMPANY)	

**ALBEMARLE CORPORATION'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO THE LOUISIANA AND
NORTH WEST RAILROAD COMPANY**

Pursuant to 49 C.F.R. §§ 1114.21 – 1114.31, Albemarle Corporation (“Albemarle”) directs the following interrogatories and requests for production of documents to The Louisiana and North West Railroad Company (“LNW”), to be responded to within 15 days of service. All responsive documents should be sent to Keller and Heckman LLP, 1001 G Street, NW, Suite 500 West, Washington, DC, 20001, Attn: Martin W. Bercovici.

DEFINITIONS

A. “Albemarle” shall mean and refer to the petitioner in this suit, Albemarle Corporation, and any persons associated with it, including, but not limited to, subsidiaries or affiliated entities, officers, directors, employees, agents, representatives, predecessors, successors, assigns, attorneys, and/or any of them.

B. “LNW” shall mean and refer to The Louisiana and North West Railroad Company, and any persons associated with it, including, but not limited to, subsidiaries or

affiliated entities, officers, directors, employees, agents, representatives, predecessors, successors, assigns, attorneys, and/or any of them.

C. "You" and "your" shall mean and refer to LNW.

D. "Albemarle Plant" or "Destination" shall mean and refer to Albemarle's Magnolia, Arkansas South Plant which is located approximately 7 miles south of Magnolia, Arkansas, a/k/a "Ethyl, AR" including its rail facilities.

E. "Tariff 8002-E" shall mean and refer to the document denominated The Louisiana and North West Railroad Company Freight Tariff LNW 8002-E bearing an "issued" date of December 1, 2005 and an "effective" date of December 21, 2005.

F. The term "rates" shall include contract rates and tariff rates.

G. The term "shipper" shall mean a user of rail services, including a consignor, a consignee, and/or a receiver.

H. The terms "studies," "analyses" and "reports" shall mean and include studies, analyses, and reports in whatever form, including, but not limited to, letters, memoranda, tabulations, and computer print outs of data selected from a database.

I. "Albemarle route(s)" means the LNW railroad line segments over which LNW moves empty and/or loaded carloads between LNW's interline received junction and destination (i.e., Albemarle's Plant) and loaded and/or empty carloads between Albemarle's Plant and LNW's interline forwarding junction.

J. "Albemarle service" means all of the services provided by LNW in connection with the transportation of commodities in Albemarle carloads over Albemarle's route(s).

K. "Albemarle carload(s)" means the loaded and/or empty carloads moving to and/or from Albemarle's Plant over the Albemarle route(s).

- L. "Albemarle train(s)" means the LNW trains transporting Albemarle carloads moving to and/or from Albemarle's Plant over the Albemarle route(s).
- M. "Challenged Rates, charges and practices" means the rates, charges and practices for common carrier rail transportation service that are the subject of Albemarle's Petition for Declaratory Order in this proceeding.
- N. "Line segment" means a station pair between which density (gross tons) statistics are uniform.
- O. "Origins" means the origin locations from which commodities destined to Albemarle's Plant originate and associated rail trackage.
- P. "Price" and/or "prices" means the price per ton or other unit of measure, and whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other conveyance.
- Q. "SARR States" means the States of Arkansas and Louisiana.
- R. The words "relate," "relating," "pertain," "pertaining," "reference," "referencing," "refer," "referring," and/or derivatives thereof, whether followed by a preposition or not, have the broadest meaning that may be accorded to them and include, but are not limited to, the following: directly or indirectly mentioning, describing, referring to, pertaining to, being connected with, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, proving, disproving, referring to, constituting, concerning, and/or connected or reflecting in any way upon the stated subject matter of a given request.
- S. The word "document" has the fullest meaning allowed by law and includes, but is not limited to, any paper, book, record, letter, memorandum, meeting minutes, contract, agreement, invoice, handwritten notes, drawing, sketch or other similar materials, microfiche,

microfilm, audiotape, videotape, electronic communication including e-mail and instant messages, and all types of digital storage such as hard disc drives.

T. "Communications" includes any form of attempted or actual oral, written, graphic, or other representation or articulation.

U. "Identify" means:

1. in the case of a natural person, documents that state his or her name, business address, title or position, and/or last known business and home telephone number;
2. in the case of a non-natural person, documents that state the full name, the address of the principal place of business, the telephone number, and/or the name of its chief executive officer and/or president.

V. The terms "each" and "every" shall include the term "each and every." "Any" shall include the term "any and all."

W. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request.

X. The singular of words includes the plural and the plural includes the singular.

Y. Masculine, feminine, or neuter pronouns include the other gender(s).

INSTRUCTIONS

A. Each paragraph below shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

B. Where these discovery requests seek data in a computer-readable or machine-readable format, for each computer file supplied provide:

1. The name and description of the source database or other file from which the records in the computer file were selected;
2. A description of how the records in the file produced were selected;
3. The name, title and location of the individual (or contractor) responsible for developing the data responsive to the request;
4. Each computer program (in native software and text file) and intermediate file used in deriving the files produced; and,
5. for each field in each computer file provide:
 - a. the name of the field;
 - b. The starting and ending positions of the field;
 - c. A detailed definition of the field;
 - d. The type of data in the field, *i.e.*, whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (*i.e.*, negatives allowed);
 - e. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each;
 - f. An indication of whether the data in the field are packed or compressed; and,
 - g. If the data in the field are packed or compressed, the type of packing or compression:
 - 1) Zoned with low-order sign;
 - 2) Binary with LSB first;
 - 3) Binary with MSB first;
 - 4) Packed with high-order sign;
 - 5) Packed with low-order sign;
 - 6) Packed with no sign; and,

7) Other (specify and provide detailed instructions for unpacking).

C. All documents and things responsive to a request should be produced, including, without limitation, each copy of an original that differs in any way from the original, whether such difference is caused by deletions, markings on the front and/or back, format, or any other cause.

D. Identical copies or exact photographic reproductions may be furnished in lieu of original documents, provided that it is understood that, by doing so, the submission includes a waiver of any objection as to the authenticity of said copies as true and original copies of the originals, should such copies be offered into evidence. Submission of such copies or reproductions shall constitute such a waiver and the submitting party is thereafter precluded from tendering an objection. Absent such waiver, only original documents should be submitted. Any documents produced in electronic form should be provided in a recognized format, such as Microsoft Word, Corel WordPerfect, or ASCII.

E. Documents and things produced in response to these requests shall be produced together with copies of file labels, dividers, and other identifying markers with which they were associated in the ordinary course of business.

F. Documents and things produced in response to these requests shall be produced in their entirety, without abbreviation or expurgation, and without redacting any portion therefrom.

G. Documents and things produced in response to these requests shall be specifically identified as responding to the appropriate request(s) contained herein and shall be produced in a form that renders the material intelligible, legible, and/or capable of reproduction.

H. If there are responsive documents or things within your possession, custody, or control that are not produced because they are privileged or otherwise protected from mandatory

disclosure under applicable law, please so state. For each such document or thing, please prepare and submit to Albemarle, a log identifying all information that you contend supports your claim that such information must be withheld, including, without limitation, the following: (a) the privilege(s) or reason(s) for withholding production; (b) the nature of the document or thing (letter, memorandum, handwritten notes, software, audio recording, etc.); (c) date; (d) author(s) and recipient(s); (e) each person to whom such information was available; (f) a general description of the subject matter; and (g) the documents uniquely identified page range (e.g., "Bates" numbers). Provide said log at the time of production.

I. If any response to any request or interrogatory contains any objection, please state with specificity the grounds for each such objection and the part of the request to which the objection is made, but respond to such request fully insofar as it is not deemed objectionable or to the extent that it may be responded to subject to such objection.

J. These requests for documents and interrogatories are continuing and LNW must supplement its responses and/or production of documents upon discovering or learning of additional information or responsive documents in its custody, possession, or control that were not produced or included in an earlier response.

K. If any otherwise responsive document was, but is no longer in LNW's possession, custody or control, identify the document with particularity and identify its current or last known custodian and describe in full the circumstances surrounding its disposition from LNW's possession or control. A document shall be deemed to be in LNW's control if they have the right to secure the document or a copy thereof from another person or entity (public or private) having possession or custody thereof.

L. If any otherwise responsive document has been lost, discarded or destroyed, it shall be identified as completely as possible, including, without limitation, the following information: (a) the date of disposal; (b) the manner of disposal; (c) the reason for disposal; (d) the person authorizing disposal.

M. If any request herein cannot be complied with in full, it shall be complied with to the extent possible, and you should explain why full compliance is not possible.

N. Documents and things produced in response to these requests may be responsive to more than one request. The presence of such duplication shall not be interpreted to narrow or limit the scope of each request. Where a document or thing is responsive to more than one request, only one copy may be produced. However, you shall identify each request to which the duplicate document or thing is responsive.

O. Unless otherwise stated, these requests call for the production of all documents and things created anywhere in the world for any use, or potential use, anywhere in the world.

P. Each interrogatory should be answered separately. Interrogatories should not be combined for the purpose of supplying a common answer. An interrogatory should not be answered by referring to the answer of another interrogatory unless the answers are identical in all respects.

INTERROGATORIES

Please answer, under oath, the following interrogatories:

1. As to Tariff 8002-E, state the following:
 - a. The time and date when it was issued and the place where it was issued;
 - b. Describe in detail and with particularity the authority under which it was issued;

- c. Identify each and every customer to whom this tariff applies and as to each, state when the tariff first went into effect;
 - d. When and where was it filed, and by whom;
 - e. The date, time, place and circumstances under which a copy of this tariff was first given to Albemarle; and,
 - f. Identify the predecessor tariff and each customer to whom it applied.
2. State the rate charged by LNW to Albemarle for the following services prior to the institution of Tariff 8002-E, and for each, describe how that charge was established:
 - a. Switching within the plant;
 - b. Switching to or from the hold tracks;
 - c. Holding cars on LNW's tracks; and,
 - d. Weighing.
3. As to each track at the Albemarle Plant other than the main track, including, but not limited to, Tracks A, B, C, D, E, 00, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, the switch track and the scale track, please identify the follow:
 - a. The owner of the track;
 - b. The owner of the right of way on which the track is located;
 - c. Who paid to build the track (and in what amounts or proportions if jointly funded);
 - d. Who pays property taxes on the track;
 - e. Whether the track is listed on your asset ledger/listing; and,
 - f. Who is responsible for maintaining the track (and in what amounts or proportions if jointly maintained).
4. State whether you have incurred any increased labor costs since August 1, 2004, and if so, how much. Produce the documents upon which you rely to support your answer.

5. State whether you have incurred any increased fuel costs since August 1, 2004, and if so, how much. Produce the documents upon which you rely to support your answer.
6. State whether you have incurred any increased insurance costs for property and/or liability insurance since August 1, 2004, and if so, how much. Produce the documents upon which you rely to support your answer.
7. Define the "adequate rate of return to our owner" referred to in the November 4, 2004 letter from Rick Jany, V.P. & G.M., LNW, to Danny Wood, Albemarle, and state how that rate of return was calculated and how it was determined to be adequate.
8. Describe the distinction in Freight Tariff 8002-E, Item 200, between "cars which do not move out of route or require a backhaul," and cars which "must move out of route or involve a backhaul."
9. Provide a complete description of LNW's Albemarle service, including, but not limited to, an identification of the route(s) used and a description of all transportation-related activities at Origins or On-Junctions, Destinations or Off-Junctions, and all intermediate stations and other locations on the Albemarle route(s).
10. Provide a complete description of all information that LNW uses in determining the facilities maintenance and operating costs associated with the movement of carloads in trains over LNW's rail lines, including, but not limited to, costs related to equipment that LNW owns, leases, operates and/or uses in providing service involving carloads of commodities received by, or originated from, Albemarle's Plant. By way of clarification, this Interrogatory seeks only a description of the information used by LNW for the

purposes described. LNW need not produce any formulas or programs that LNW uses to manipulate such information.

11. Identify each computer program(s) or model(s) that are, or within the past five years have been, used by LNW to simulate a locomotive's and/or a train's performance while moving over a particular territory.

12. Describe how LNW assigns locomotives to (i) trains moving Albemarle commodities; and (ii) other trains for its system, including, but not limited to, a description of each computer model(s), database, and/or other information that LNW uses for this purpose.

13. With respect to forecasts, projections, budgets or other planning documents prepared by or for LNW (or in LNW's possession), from, and including, 2003 through the present, of future (*i.e.* 2006 or later) traffic to be handled and/or revenues to be earned by LNW for (i) commodities and (ii) other freight traffic, moving over any portion of LNW's system located in the SARR States, please identify:

- a. All forecasts that have been developed (including all draft, unofficial, and official (in final form) forecasts);
- b. How often such forecasts are prepared;
- c. The sources from which forecast input data are derived (*e.g.*, the individuals, LNW departments, consultants, contractors, etc. that are involved in generating forecasts or forecast input data);
- d. The manner in which forecast input data is derived, including where, how, and in what format that data and information is stored and maintained by LNW;
- e. The length of time (in years) that each identified forecast covers (*e.g.*, 3, 5, 10, 15, 20 years, etc.); and,
- f. The length of time (in years) that input data and information which LNW possesses, or maintains, forecasts traffic and/or revenues (*e.g.*, 3, 5, 10, 15, 20 years, etc.).

14. Describe each computer program, data management systems and/or data warehouse that LNW uses to monitor, record, review, analyze, summarize and/or evaluate its car movement, train movement, train operation and related expense and revenue data. Please describe, in particular, each computer program, data management system and/or data warehouse that permits real-time access to and/or summarization of current and/or historical car movement, train movement, train operations and related expense and revenue data, including descriptions of their usage as an analytical tool for LNW, and including descriptions of their query, reporting, data export, and data combination capabilities.

15. Provide a description of how the data provided in response to Request for Production Nos. 31-33 is extracted from LNW's database(s). Please state whether the procedure takes more or less time than it would take if the data was extracted using any system described in Interrogatory No. 14.

16. State the maximum permissible gross weight on rail ("gwr") per railcar for each LNW line segment comprising the Albemarle route.

17. Describe in detail all yard and/or road switching service which LNW performs with respect to the Albemarle trains. If no switching is performed, please so state.

18. State whether you have changed any service terms since August 1, 2004, and if so, please identify each such change, the amount of any increase in rates or charges attributable to that change in service terms, and the cause or causes for each such change in service terms. Produce the documents upon which you rely to support your answer.

19. As to any service terms established or changed since August 1, 2004, state the following:

- a. The time, date and place when it was issued;
 - b. Describe in detail, and with particularity, the authority under which it was issued;
 - c. Identify each and every customer to whom this service term applies and as to each, state when the service term first went into effect;
 - d. When and where was it filed, and by whom;
 - e. The date, time, place and circumstances under which a copy of this service term and/or change of service term was first given to Albemarle; and,
 - f. Identify the predecessor service term and each customer to whom it applied.
20. Identify the corporate structure and officers of LNW from, and including, January 1, 2000 to date.
21. Identify each and every officer, employee, and/or third party responsible for maintaining and/or auditing LNW's financial records from, and including, January 1, 2000 to date.
22. For any factual statement made in the Petition by Albemarle that LNW does not agree with or otherwise disputes:
- a. Please identify the specific fact disputed;
 - b. The reason it is disputed; and,
 - c. The LNW officer, employee or third party that has knowledge of that disputed fact.
23. Explain the relationship of Thomas Foley and Robert Iwamoto to the LNW, and explain each individual's involvement with the non-signatory contract with Albemarle allegedly terminated in December, 2005, the termination/alleged termination of such non-signatory contract, the establishment of any new tariffs since August 1, 2004, and/or the establishment or change of any service terms since August 1, 2004.

24. State whether you have incurred any other increased costs (other than those specifically identified in response to Interrogatory Numbers 4, 5, & 6) for railroad operations since August 1, 2004 and, if so, please identify each such increased cost, the amount of such increase and the cause(s) for each such increase. Product the documents upon which you rely to support your answer.

25. For each such Interrogatory and document request, identify, by name, title and address, the person(s) who prepared each answer to each of these Interrogatories, and each person with whom he/she consulted, and identify each person who reviewed and selected the documents to be produced in response to each of the following Document Production Requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents:

1. A copy of Tariff 8002-E and all supplements thereto and successive issues thereof.
2. All documents evidencing transmittal of Tariff 8002-E to Albemarle.
3. All documents related to the creation of Tariff 8002-E including, but not limited to, drafts, e-mails, memoranda and meeting minutes.
4. All documents upon which you relied and/or reviewed in establishing a \$500 per car switching fee in Tariff 8002-E.
5. All documents upon which you relied and/or reviewed in establishing a minimum number of switches per day in Tariff 8002-E.

6. All documents upon which you relied and/or reviewed in establishing a \$150 per car weighing charge in Tariff 8002-E.
7. All tariffs under which you provided any service to Albemarle from January 1, 2000, to date.
8. All tariffs currently in effect for any customer of LNW.
9. All tariffs that you issued on or after January 1, 2000, or that have been in effect during any portion of that time period.
10. A copy of Freight Tariff LNW 8002 and all supplements thereto and successive issues thereof, including, but not limited to, Freight Tariff LNW 8002-D.
11. A copy of LNW General Demurrage Rules and Charges Tariff LNW 6000 and all supplements thereto and successive issues thereof in force at any time since January 1, 2000 to date.
12. All contracts entered into between Albemarle and LNW, and/or under which LNW provided services to Albemarle at any time since January 1, 2000, to date.
13. All documents related to the "non-signatory" contracts submitted to Albemarle.
14. All documents related to any "non-signatory" contract drafted, in whole or in part, by LNW from January 1, 2000, to date.
15. All documents relating to any agreement between LNW and Albemarle relating to charges for switching and weighing services that was in effect at any time since January 1, 2000.
16. All documents relating to the decision of LNW to cancel each of its contracts with Albemarle that were cancelled since January 1, 2003.
17. Documents sufficient to show LNW's share of the fees paid for line haul service to the Albemarle plant since January 1, 2003.

18. LNW's agreements with the Union Pacific Railroad Company and The Kansas City Southern Railway relating to the interchange of traffic originating at, or destined to, the Albemarle Plant since January 1, 2003.

19. All documents relating to the construction and/or ownership and/or leasing of any of the train tracks and/or rights-of-way for those tracks at the Albemarle Plant, including, but not limited to, Tracks A, B, C, D, E, 00, 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, the switch track and the scale track including, but not limited to, copies for each of the side track agreement, property records and property tax records, identified in each instance as to track number.

20. All documents relating to any request to abandon service submitted to the Surface Transportation Board by LNW since January 1, 2000.

21. All common carrier service offerings issued by LNW since January 1, 2000.

22. All documents related to the calculation of LNW's switching charge increase to Albemarle effective August 1, 2004.

23. All documents related to the calculation of LNW's switching charge increase to Albemarle effective March 1, 2005.

24. All bulletins relating to the Albemarle plant issued by you from January 1, 2000 to date.

25. All documents relating to your decision to terminate your linehaul service upon delivery of inbound rail cars to Albemarle's main lead track inside the plant gate.

26. All documents relating to your decision to impose a switching charge to spot inbound rail cars on the specific lead track and at a location convenient to Albemarle to unload.

27. All documents relating to your decision to impose a switching charge on each car in a line of cars that is moved incidental to a car switching or spotting movement.

28. All documents relating to your decision to impose a \$1,000 per car per day hold charge for cars held on the tracks of LNW including, but not limited to, documents relating to how you calculated that rate.

29. All documents related to the calculation of the "adequate rate of return" reference in Interrogatory 7 above.

30. All documents relating to the service of the November 23, 2005 notice on Albemarle including, but not limited to, documents related to the decision to serve the notice on November 23, 2005.

31. All Agreements between the St. Louis Southwestern Railway Company (or any successor, including, but not limited to, the Union Pacific Railroad Company) concerning the lease of track between McNeil and Magnolia, Arkansas in effect at any time since January 1, 2000.

32. All documents describing the service rendered by LNW to and/or on behalf of the Albemarle Plant, including all operational descriptions, from January 1, 2000, to date.

33. All current operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and "condensed profiles" which are applicable to all lines comprising LNW's system. Please provide the requested documents in machine-readable format to the extent available (including all necessary documentation).

34. Documents or data, in a computer-readable format to the extent available, which provide the following information for each Albemarle train movement for each year or partial year from, and including, 2003 to the present:

- a. Each crew district through which Albemarle trains pass identified by "from" and "to" stations;
- b. The route miles in each such crew district;

- c. The route(s) used;
- d. The loaded train miles over the route(s);
- e. The empty train miles over the route(s);
- f. The number of diesel units per train by the unit measure of rail line (e.g., crew district or line segment) for the loaded route(s);
- g. The number of diesel units per train by the unit measure of rail line for the empty route(s);
- h. The number of cars per train by the unit measure of rail line for the loaded route(s);
- i. The number of cars per train by the unit measure of rail line for the empty route(s);
- j. The trailing weight of each train (cars and contents) by the unit measure of rail line for the loaded route(s);
- k. The trailing weight of each train (cars and contents) by the unit measure of rail line for the empty route(s);
- l. The average net load (tons per car) of each car, and,
- m. The tare weight of each car.

35. For each line segment on LNW's system which has been traversed by an Albemarle loaded and/or empty train from January 1, 2003 to the present, produce documents, in a computer-readable format to the extent available, which provide the following information for each year, and partial year, from, and including, 2003 to the present:

- a. The "from" and "to" stations (by station name and milepost);
- b. The LNW mileage owned and operated, separated into:
 - (i.) Miles of road;
 - (ii.) Miles of second main;
 - (iii.) Miles of all other main tracks; and
 - (iv.) Miles of passing tracks, crossovers and turnouts.

- c. The miles of road operated under trackage rights;
- d. Authorized speeds for unit coal trains, other unit trains, general freight trains, and passenger trains;
- e. The percent of track-miles in curves of two (2) degrees or more;
- f. The percent of track-miles in curves of four (4) degrees or more;
- g. The elevation of the track;
- h. The weight of rail;
- i. The percent of rail where rail lubrication is employed;
- j. The mechanism(s) by which rail lubricants are applied;
- k. The percent of track-miles of welded rail;
- l. FRA classes of track (e.g., 20 miles of Class IV track, 30 miles of Class III track, etc.);
- m. The train-miles, car-miles (loaded and empty), gross ton-miles of cars and contents, gross ton-miles of locomotives and cabooses, and gross ton-miles of locomotives, cars, contents and cabooses for:
 - (i.) Coal unit train or train load traffic;
 - (ii.) Other unit train or train load traffic;
 - (iii.) General freight heavy wheel load traffic;
 - (iv.) General freight traffic (excluding heavy wheel load traffic);
 - (v.) Passenger traffic;
 - (vi.) Intermodal traffic; and
- n. The average transit speed by type of train specified in subpart (m) above.

36. Documents, in a computer-readable format to the extent available, which provide the following information for LNW's entire system, subdivided into the following categories of track: A - freight density of 20 million or more gross ton miles per track mile per year (include passing tracks, turnouts and crossovers); B - freight density of less than 20 million gross ton miles per track mile per year, but at least 5 million (include passing tracks, turnouts and crossovers); C -

freight density of less than 5 million gross ton miles per track mile per year, but at least 1 million (include passing tracks, turnouts and crossovers); D - freight density of less than 1 million gross ton miles per track mile per year (include passing tracks, turnouts and crossovers); E - Way and yard switching tracks (passing tracks, crossovers and turnouts shall be included in category A, B, C, D, F, and Potential abandonments, as appropriate); F - track over which any passenger service is provided (other than potential abandonments). Mileage should be included within track categories A through E entries unless it is dedicated entirely to passenger service F - Potential abandonments - Route segments identified by railroads as potentially subject to abandonments as required by Sections 10903 and 10904 of the ICC Termination Act:

- a. Miles of track;
- b. Miles of road;
- c. For any line segments operated under trackage rights, miles of track and miles of road;
- d. Track-miles of continuous welded rail;
- e. Weight of rail;
- f. Percent of track-miles in curves of two (2) degrees or more;
- g. Total gross ton-miles, loaded car-miles and empty car-miles generated by cars and contents for:
 - (i.) Coal unit train or trainload traffic;
 - (ii.) Other unit train or trainload traffic;
 - (iii.) General freight heavy wheel load traffic;
 - (iv.) General freight traffic (excluding heavy wheel load traffic);
 - (v.) Passenger traffic;
 - (vi.) Intermodal traffic; and
- h. The average transit speed by type of train specified in subpart (g) above.

37. For each line segment in LNW's system, produce documents, in a computer-readable format to the extent available, which contain operating statistics and density data (including, but not limited to, train miles, train hours, locomotive unit-miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic for each year, or partial year, from, and including, 2003 to the present.

38. Produce LNW's system density charts and/or tables showing gross ton-miles moving by direction and by line segment for each year or partial year from, and including, 2003 to the present, and state whether or not, gross ton-miles for locomotives are included.

39. All documents, in a computer-readable format to the extent available, including all necessary documentation, from LNW's cost center accounting or current enterprisewide expense reporting system (or data management or data warehouse system) which provides the following information for each year or partial year, from, and including, 2003 to the present:

- a. Total maintenance of way and structures expenditures for the LNW system by expense category;
- b. Total maintenance of way and structures expenditures for each line segment on LNW's system . Please provide the following information:
 - (i) Geographic description of each cost center;
 - (ii) Identification of the general expense category related to each expenditure;
 - (iii) Identification of the cost function or code related to each expenditure; and,
 - (iv) Identification of the center (or other term used by LNW) that each cost center reports to.
- c. The identification of each cost center that captures maintenance of way and structures expenses on LNW's system;

- d. The geographic boundaries, *e.g.*, milepost, of each cost center identified in response to (c) above;
- e. The organizational listing which identifies each cost center on LNW;
- f. The reporting structure of LNW's accounting system which identifies and links the lowest level cost center up to the system or highest level cost center;
- g. The RDS Roadmaster Headquarters and Territory Listing, or any other document containing similar information, for each of the LNW regions traversed in whole or in part by Albemarle trains;
- h. The identification of each cost center by each division/district contained in the listings identified in response to (g) above;
- i. Railway Operating Expenses for Account 3 – Grading, Account 8 – Ties, Account 9 – Rail and OTM, and Account 11 – Ballast The Annual Report Form R-1, Schedule 410 accounts which correspond to each cost center value; and,
- j. The procedures utilized to allocate depreciation monies into the accounts listed in item i., immediately preceding and how the cost center system is used in this allocation process.

40. Documents that contain actual cycle time data, and all documents which contain projected cycle times, for the Albemarle trains for each year or partial year from, and including, 2003 to the present. Data is requested that shows the components of such cycle time in total and in its component pieces: loaded transit time from Origin or On-junction departure to arrival at Destination or staging location for Destination or Off-junction; time from arrival at Destination or staging location for Destination until unloading at Destination is completed (or if this information is not available until empty departure from Destination); time from completion of unloading to time of departure from Destination; time from empty departure from Destination to arrival at Origin or Off-junction. If such documents do not exist, please provide such documents that do exist, in hard copy and computer-readable format to the extent available, including all

necessary documentation, from which the cycle times for the Albemarle trains for each year or partial year from, and including, 2003 to the present can be derived.

41. For each valuation section on LNW's system traversed in whole or in part by the Albemarle trains, please provide the following information for each year from, and including, 2003 through the present in a computer-readable format to the extent available, and specify, for each subpart, whether the accounting methodology is on a depreciation accounting basis or on a betterment accounting basis:

- a. A description by milepost and station name of the properties encompassed by each valuation section (as of December 31st for each year);
- b. A description by milepost and station name of the portion of the valuation section identified in response to a. above traversed by any Albemarle train (as of December 31st for each year);
- c. Gross values by ICC/STB property account, or any other accounting method you use, included within the valuation section identified in response to a. above (as of December 31st for each year);
- d. Annual and accumulated depreciation by ICC/STB property account, or any other accounting method you use, for all properties included within each valuation section identified in response to a. above (as of December 31st for each year);
- e. Gross values by ICC/STB property account, or any other accounting method you use, of only those properties used by Albemarle trains for each valuation section identified in response to a. (as of December 31st for each year);
- f. Annual and accumulated depreciation by ICC/STB property account, or any other accounting method you use, for all properties used by Albemarle trains for each valuation section identified in response to a. above (as of December 31st for each year);
- g. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year 2003 through the present traversing the entire valuation section for each valuation section identified in response to a. above where the properties used by Albemarle trains are less than the total properties within the valuation section; and,

- h. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year or partial year, from, and including, 2003 through the present for each valuation section identified in response to a. above.

42. If the values reported in the preceding item were affected by a merger, please provide documents sufficient to show (i) the book value of LNW's merger partner and the actual amount paid by LNW for the merger partner at the time of the merger and (ii) how LNW treated the differential between the book value and the actual amount paid in its accounting system. Please provide documents sufficient to show the treatment of any differential between the book value and the actual amount paid that was subsequently passed down to each specific valuation section.

43. For each LNW investment used to the benefit of Albemarle, but not on the route of movement, please provide the following:

- o. A description by milepost and station name of the properties encompassed by each valuation section (as of December 31st for each year);
- p. A description (by milepost and station name if available) of the portion of the valuation section identified in response to (a) above used by any Albemarle train (as of December 31st for each year);
- q. Gross values by ICC/STB property account, or any other accounting method you use, included within the valuation section identified in response to (a) above (as of December 31st for each year);
- r. Annual and accumulated depreciation by ICC/STB property account, or any other accounting method you use, for all properties included within each valuation section identified in response to (a) above (as of December 31st for each year);
- s. Gross values by ICC/STB property account, or any other accounting method you use, of only those properties used by Albemarle trains for each valuation section identified in response to (a) (as of December 31st for each year);

- t. Annual and accumulated depreciation by property account for all properties used by Albemarle trains for each valuation section identified in response to (a) above (as of December 31st for each year); and,
- u. The annual traffic that each property is responsible for in a manner similar to the issue traffic identified above for each year or partial year from, and including, 2003 through the present. (Annual traffic is defined as loaded and empty cars handled, loaded and empty trains handled, or whatever measure is used by LNW).

44. Documents sufficient to show the gross values by ICC/STB property account, or any other accounting method you use, and annual and accumulated depreciation by property account, or any other accounting method you use, for LNW system assets which are not allocated to any particular valuation section(s) or line segment(s) as of December 31st of each calendar year.

45. Documents, in a computer-readable format to the extent available, which provide the following information for each (1) locomotive used by LNW in Albemarle service; (2) all the locomotives in the pool or group from which the locomotives used by LNW's in Albemarle service are drawn; and (3) all locomotives used on the LNW system for each year or partial year, from, and including, 2003 through the present:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased;
- d. Model or type (e.g., SD40);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease;
- i. Date first placed into service;

- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (*e.g.*, equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years);
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (*i.e.*, capital, operating, "power by the hour", etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or "power by the hour" agreement, the minimum annual fixed payment and the use payment (*e.g.*, per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service;
- v. Copies of all lease or rental agreements, including all agreements, supplements and amendments, plus copies of all billings, applicable to each leased or rented locomotive; and,
- w. The diesel unit-miles traveled each year or partial year from, and including, 2003 to the present:
 - i. In Albemarle service; and,
 - ii. In all types of service.

46. If at any time from January 2003 through the present, LNW used any locomotives for the movement of Albemarle trains that LNW neither owned nor leased, please produce

documents sufficient to determine the frequency of LNW's use of such locomotives as well as the cost incurred by LNW for such use, including the following:

- a. All agreements (or any arrangements other than agreements) applicable to use of the locomotive(s) including but not limited to run-through or horsepower equalization agreements or arrangements;
- b. The itemized amount of compensation or equalization for use of the locomotive, by each category of compensation or equalization, including but not limited to fuel, maintenance and servicing;
- c. Service units covered by the compensation or equalization;
- d. The methodology used for computing the compensation or equalization by component;
- e. The time periods during which the locomotive was used for the movement of Albemarle traffic; and,
- f. The locomotive unit miles traveled by the locomotive during the time period that it was used for the movement of Albemarle traffic.

47. All of LNW's locomotive maintenance and repair reports and any other documents for each year or partial year from, and including, 2003 to the present, which provide locomotive maintenance and repair expenses by locomotive or locomotive type or series (or on another basis for which records are kept) and the total locomotive unit-miles corresponding to these maintenance and repair expenses for (a) the locomotives LNW uses in the Albemarle service, and (b) all the locomotives in the LNW fleet.

48. All locomotive maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and/or original equipment manufacturers and, for each year or partial year from, and including, 2003 to the present for all the locomotives described in Request No. 47 that are under such maintenance agreements, produce documents providing (a) the amount paid for each locomotive or by locomotive type in total and broken

down by each service performed under the agreement and (b) the number of locomotive unit miles corresponding to the amounts listed above.

49. Documents sufficient to show the following:

- a. The location(s) where the locomotives handling the Albemarle trains are fueled;
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 45, either by individual locomotive, or collectively, for the most recent 12 months or calendar year;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to b., above during the same time period used in response to b., above;
- d. The method by which LNW accounts for or records fuel usage for the locomotives used for the Albemarle trains;
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in LNW's possession used to measure or estimate the fuel usage of locomotives moving Albemarle traffic; and,
- f. The same information for all road locomotives on LNW's system in the same format, *i.e.*, comparable data to that given in the responses to b., c., and e., above.

50. All studies, analyses or other documents (including summaries and supporting data), in a computer-readable format to the extent available, pertaining to the amount of fuel consumed by locomotives used on the Albemarle trains or any other trains moving over all or a portion of the Albemarle route(s).

51. For each crew district traversed by each Albemarle train (in both the loaded and empty directions), please produce documents, in a computer-readable format to the extent available (including all documentation, *i.e.*, record layouts, field definitions, code definitions, etc.), which provide the following information, in whole or in part, for individual trainmen and enginemen for each Albemarle train (as well as for each helper service crew member

participating in helper service for Albemarle trains), for each crew member participating in service for Albemarle trains, and for each road switch crew member participating in road switching service for an Albemarle train, for each year or partial year from, and including, 2003 to the present:

- a. The date;
- b. Number of enginemen (including trainees);
- c. Number of trainmen (including trainees);
- d. Place, time, and date each employee went on duty;
- e. Place, time, and date each employee went off duty;
- f. Train number assigned;
- g. Whether or not there is a relief crew;
- h. Locomotive initials and numbers (including slave units) and number of units in train;
- i. Number of cars in train;
- j. Actual miles run per train;
- k. Kind of service (e.g., local, through, switching, deadheading);
- l. Service class for each employee (including definitions of codes used);
- m. Run number (including definitions of codes used);
- n. Time claimed for each employee;
- o. Straight time actually worked, for each employee;
- p. Straight time paid for, for each employee (hours and dollars of compensation);
- q. Overtime actually worked, for each employee;
- r. Overtime paid for each employee (hours and dollars of compensation);
- s. Constructive codes, related miles and payments for each employee (including definitions of codes used and different payment rates);

- t. The definition LNW uses internally for accounting purposes for each constructive code identified in response to s. above (as a hypothetical example, if LNW defines the constructive code "BP" as "Back Pay", provide documents including a description of what constitutes "Back Pay" under LNW's accounting guidelines);
- u. For each constructive allowance code, an explanation of the basis for calculating the payment shown and the different payment rates (e.g., \$.50 for each 5 minutes of a particular activity, \$10 for company negotiated agreement to pay for an activity, \$100 to reach the amount of salary the employee is guaranteed for the month 1/13 of the employee's pay in the prior quarter for weekly vacation, etc.);
- v. Rate codes of each employee (including definitions of codes used and all different wage rates);
- w. Payments for meals and lodging for each employee;
- x. Productivity fund payments on behalf of each employee;
- y. All wage data paid to each trainman and engineman that is not otherwise included in response to a.-x.; and,
- z. All train activities for each crew handling each train, including delay reports, train activity reports, switching reports, wheel reports, bad-order pick-up/set-out reports, and conductor reports and any necessary decoders.

52. Documents which provide the following information for all of LNW's helper services operated in the SARR States for each year, or partial year, from, and including, 2003 to the present, including a separate listing for Albemarle trains:

- a. "From" and "To" stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment, including any underlying and/or supporting workpapers documenting the development of this number (i.e., if the number of helps per shift is determined to be 3, please provide the total number of shifts studied, the total helps recorded, the total hours worked, and any other data used to determine the average helper shift and average number of trains helped per shift, such as train activity reports, conductor reports, wheel reports, switching activity reports);

- e. Minimum train size/weight requiring helper service; and,
- f. Crew size per crew assignment.

53. For each year or partial year, from and including, 2003 to the present, produce all studies or analyses (including all related documents) of switching performed for the Albemarle trains.

54. Documents for each year or partial year, from, and including, 2003 to the present which provide LNW's loss and damage costs separately for each commodity LNW carries on a system-wide basis and for the Albemarle trains in particular.

55. Documents which contain the following information for each of the years from, and including, 2003 to the present:

- a. The location(s) where car inspectors inspect railcars in the Albemarle trains;
- b. The procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week) for each location identified in response to a. above;
- d. The number of car inspectors inspecting each Albemarle train at each location identified in response to a. above and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay, including all additives, for the inspectors;
- f. The number of trains each car inspector inspects during his tour of duty;
- g. Any other duties performed by the car inspectors while on duty and not inspecting trains;
- h. The percentage of time the car inspectors spend inspecting trains versus other assignments during their tour of duty;
- i. The equipment, materials and supplies used by the car inspectors;
- j. The purchase price of each item identified in response to i. above; and,

- k. The total number of trains and cars inspected at each location identified in response to a. above.

56. For each year or partial year, from, and including, 2003 to the present, please produce documents which contain the following information, in a computer-readable format to the extent available, for each of the end-of-train telemetry devices ("EOTD") used on Albemarle trains (in both the loaded and empty directions):

- a. The date of purchase;
- b. The original cost and the cost of any additions and betterments;
- c. The annual depreciation;
- d. The annual depreciation rate as a percent;
- e. The salvage value as a percent; and,
- f. The accumulated depreciation.

57. All joint facility, haulage, trackage rights or other handling agreements, including all amendments and supplements, to which LNW is a party, including but not limited to trackage rights agreements, reciprocal switching agreements, any agreements between LNW and any other railroad governing joint operations over the rail lines over which Albemarle trains run, lease agreements and any other agreements relating to sole or joint use of another carrier's tracks, bridges, buildings, or any other facility located (a) on the lines traversed by Albemarle trains, and (b) on any other line(s) owned or used by LNW in the SARR States.

58. For each agreement identified in response to Request for Production No. 57, produce copies of all bills rendered during each year or partial year, from, and including, 2003 to the present covering each agreement identified, and to the extent they are available, produce documents which identify:

- a. The procedures followed in calculating maintenance and other expenses, and return on investment, used to bill each party to the agreement;

- b. The party(ies) responsible for maintenance of way and structures expenses, by milepost;
- c. The accounting procedures followed by each carrier party to the agreement, including identification of all debits and credits, by month, by STB account for each year or partial year, from, and including, 2003 to the present;
- d. Each participating or using carrier's total car-miles, train-miles, gross ton-miles and net ton-miles over the facility and any other service units used in the development of costs or charges;
- e. The facilities involved, by milepost, and ownership thereof;
- f. The method by which the rate, charges, fees, etc. used in billing each party to the agreement is calculated;
- g. All other expenses, by milepost; and,
- h. The party(ies) responsible for all other expenses, by milepost.

59. Documents for each year or partial year, from, and including, 2003 to the present which contain the following, in a computer readable format, for each freight and intermodal car LNW purchased or leased (including cars currently on order):

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased,
- d. AAR car type;
- e. Tare weight;
- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (*e.g.*, capital, operating, full service, net operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;

- k. If leased, whether the lease is capital, net operating or full service operating;
- l. If purchased, the AFE applicable to each purchased freight car; and,
- m. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

60. For each rail car LNW provided to be used in the Albemarle service for each year or partial year, from, and including, 2003 to the present, produce documents sufficient to show the following information:

- a. Car initial and number;
- b. Source of the car;
- c. The information requested in Request for Production No. 59, to the extent not provided in response thereto with respect to the subject rail car(s); and,
- d. The load limit of the car.

61. Documents and databases utilized by LNW, *e.g.*, by the Operating Department's Equipment Management or Equipment Maintenance Department regarding freight car repair maintenance by car number, car type code, or car type code groupings that develop or report costs to repair cars on a car-mile, gross ton-mile and/or per annum basis for running, light, medium and heavy repairs.

62. All rail car repair and maintenance reports and related documents which include, or record, rail car repair and maintenance expenses for each year or partial year, from, and including, 2003 to the present, and the total rail car-miles corresponding to these repair and maintenance expenses, in a computer readable format to the extent possible, for all freight cars identified in response to Request for Production Nos. 60 – 61. This information should include, to the extent possible, amounts for Repairs, Depreciation (broken down by owned or leased

assets), Amortization, Leases and Rentals, Investment Base (broken down by owned or leased assets), and Accumulated Depreciation (broken down by owned or leased assets).

63. Produce, in a computer-readable format (with all documentation related to any data bases or computer programs used to generate the requested information), the information listed below for each movement LNW handled as originating, terminating, overhead or single-line carrier that traveled in the SARR States for each year or partial year, from, and including, 2003 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on LNW's system, the date and time the shipment was originated;
- e. For shipments LNW received in interchange, the on junction location and station number;
- f. For shipments LNW received in interchange, the road received from;
- g. For shipments LNW received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, the off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on LNW's system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC");

- o. Destination SPLC;
- p. Number of Cars;
- q. Tons (Net);
- r. Tare weight;
- s. Total freight revenues from Origin to Destination, including any adjustments thereto;
- t. LNW's share or division of the total freight revenues, including any adjustments thereto;
- u. Waybill number and date;
- v. TOFC/COFC plan;
- w. Car/trailer initial for each car/trailer used to move the shipment;
- x. Car/trailer number for each car/trailer used to move the shipment;
- y. If a trailer or container is used to move the shipment, the car initial and number used to move the trailer or container;
- z. The train identification number of all trains used to move the shipment;
- aa. The number of locomotives, by train identification, by segment, used to move the shipment;
- bb. The total horsepower, by train identification, by line segment, used to move the shipment;
- cc. Total loaded movement miles;
- dd. Total loaded miles on LNW's system;
- ee. AAR car-type code;
- ff. Ownership of car (*i.e.*, system, private or a foreign road); and,
- gg. Car hire rates and car hire paid by LNW on foreign road and private cars, including any contract adjustments that result in zero car hire on private cars.

64. Documents, in a computer readable format to the extent available, which contain information tracking and describing car and train movements for each freight car and each train

moving on LNW to, from, and/or through the SARR States for each year or partial year, from, and including, 2003 to the present.

65. Copies of the LNW train dispatcher sheets (and the data recorded in such sheets in a computer readable format, to the extent available), or other documents (e.g., conductor wheel reports) that record train movement data in a computer readable format to the extent available, for all car and train movements and yard and hub operations on LNW to, from or through the SARR States for each year or partial year, from, and including, 2003 to the present.

66. All documents, including programs, decoders, and instructions, necessary to link the data produced in response to Request for Production Nos. 63-65.

67. Produce the following information pertaining to rail movements of all traffic in, out, and through the SARR States:

- a. For each movement of interline and overhead traffic, the revenue divisions received separately by LNW and the connecting railroad carrier(s) (including short-line, regional and Class I carriers);
- b. For each movement identified in a. above, the commodity, the connecting railroad(s), the basis of the revenue divisions and the calculation of the revenue divisions; and,
- c. For each movement referred to in b. above, documentation that describes the methodology or convention that LNW and the connecting rail carrier(s) followed to determine the revenue divisions.

68. All transportation contracts, including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all common carrier pricing authorities or other documents containing common carrier rate and service terms, that LNW entered into, agreed to and/or provided which govern shipments handled by LNW as originating, terminating, overhead or single-line carrier to, from and/or through the SARR States in any of the years from, and including, 2003 and beyond.

69. All forecasts or projections prepared by or for LNW (or in LNW's possession) from, and including, January 1, 2003 through the present, of future (*i.e.* 2006 or later) traffic volumes and/or revenues for all freight traffic (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of LNW's system located in the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies, authorization for expenditures, marketing studies, operating studies, operating expense budgets, or capital budgets, and/or mergers with or acquisitions of other carriers, including, but not limited to, all forecasts or projections identified in response to Interrogatory No. 13.

70. Any studies and/or analyses (including any documents, computer models and inputs to run the model, supporting databases and manuals used in such study or analyses) of train transit or cycle times for LNW's train movements originating, terminating and/or passing through the SARR States for each year or partial year from, and including, 2003 to the present. Included in this Request are documents containing the following information for each movement, in a computerized format to the extent available:

- a. Waybill number and date;
- b. Car/trailer initial and number;
- c. Origin location, *i.e.*, city, state, FSAC and SPLC;
- d. Destination location, *i.e.*, city, state, FSAC and SPLC;
- e. Transit/cycle time from origin to destination;
- f. Location (*i.e.*, city, state, FSAC and SPLC) where shipment enters the states identified above;
- g. Location (*i.e.*, city, state, FSAC and SPLC) where shipment departs from or terminates in the states identified above;

- h. Transit/cycle time while movement is within the states identified above;
- i. Projected cycle time; and,
- j. The standard, expected or contractual transit or cycle time.

71. Documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (e.g., locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored useable) for each locomotive that LNW owned or leased for each year or partial year from, and including, 2003 to the present.

72. Documents which describe and explain how LNW assigns locomotives to each train on LNW's system, including, but not limited to, all documents related to LNW's response to Interrogatory No. 12. If LNW uses a computer readable model for this purpose, please produce the model and all supporting data bases and operating manuals.

73. Documents which describe how LNW determines the dispatch priority given to each train type, (e.g., intermodal, local, through, general freight, unit coal, etc.) moving on LNW's system.

74. Produce LNW's condensed freight schedules for unit train, through train, local train, and TOFC/COFC train service in the SARR States for each year or partial year from, and including, 2003 to the present, as well as all documents and programs, in a computer-readable format to the extent available, which provide or describe LNW's methodology for scheduling all trains (i.e., Unit Trains, General Freight, etc.) that operate on LNW's line segments in the SARR States.

75. Documents sufficient to show the following information for each year, or partial year, from, and including, 2003 to the present with respect to each Trailer Train car used by

LNW to transport intermodal and automotive traffic, in a computer-readable format, if available, on those portions of LNW's system located in the SARR States:

- a. The cost to LNW for the use of the car;
- b. AAR car type;
- c. Tare weight;
- d. Length; and,
- e. The methodology used for calculating LNW cost for the use of the car.

76. For each year, or partial year, from, and including, 2003 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned or shipper-leased coal, freight and intermodal car moving over the LNW system located in the SARR States.

- a. Identification number of the car;
- b. The type of the car;
- c. The terms of any mileage allowance agreement covering the car;
- d. Whether the car is subject to a zero-based mileage agreement;
- e. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and,
- f. The year of manufacture of the car.

77. Documents (in computer-readable format, if available) sufficient to identify the per diem rates per car and time and mileage amounts LNW paid to the owning line(s) during each year or partial year, from, and including, 2003 to the present for use of any foreign owned cars moving over those portions of LNW's system located in the SARR States.

78. All car maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and, for each year or partial year, from, and including, 2003 to the present, for all the cars on LNW's system, and documents providing (a) the amount

paid for each car or by car or by car type total and broken down by each service performed under the agreement and (b) the number of car-miles corresponding to the amounts referenced above.

79. For each of the years and partial years, from, and including, 2003 to the present, produce the detailed annual wage information that shows the amounts paid to each LNW employee including the following: job description and title, straight time paid, overtime paid, vacation, and other allowances.

80. Documents setting forth the criteria LNW uses, and the instructions LNW provides to LNW's personnel, to differentiate between spot (expensed) and program (capitalized) maintenance of way expenses, including any lists of maintenance of way expense items that LNW classifies as spot (expensed) maintenance.

81. For maintenance of way and/or construction performed by contractors in SARR States for the period from, and including, 2003 to the present, please produce copies of all bills for services, and documents which contain a description of the line location of the contract repairs and/or construction, and the details of the work performed, including labor and materials. If LNW does not maintain copies of any of these documents, produce whatever documents LNW does maintain and/or has available to it describing the costs incurred by LNW and the details of the work performed, in a computer readable form if applicable (including all necessary documentation).

82. Documents sufficient to show the following for construction projects that LNW has undertaken since January 1, 2000:

- a. Standard construction project specifications;
- b. Standard estimating procedures for track construction projects; and,
- a. Standard estimating procedures for non-track construction projects.

83. All of LNW's price list books governing prices for construction and maintenance materials (including, but not limited to, all weights of rail, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by LNW's personnel for estimating costs of maintenance and construction projects for each year or partial year, from, and including, 2000 to the present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

84. Documents sufficient to show the following information with respect to ballast or sub-ballast used on LNW's system for each of the years, from, and including, 2000 to the present:

- a. The average cost per cubic yard for ballast;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in b. above;
- d. The average cost per cubic yard for sub-ballast;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in e. above; and,
- g. The names and locations of any quarries supplying such ballast or sub-ballast.

85. Bridge lists or other documents detailing location, a description of what is being crossed (e.g., river, interstate highway, navigable waterway etc.), type, length, height, etc., for all bridges located on LNW's system in the SARR States.

86. For each of the types of bridges identified in the documents produced in response to Request for Production No. 85, please produce documents sufficient to show the unit costs (e.g., cost per foot or other appropriate measure), for single track open deck and ballast deck construction and double track open deck and ballast deck construction, for each year, from, and including, 2000 to the present.

87. Documents sufficient to show the tunnels or former tunnels that have been constructed or removed (by daylighting or other means) by LNW in the past five (5) years, detailing location (line segment and railway milepost), length, number of tracks in the tunnel, method and time period of construction, and the cost per linear foot to construct or remove the tunnel, for any tunnels located on LNW's system in the SARR states. If no cost data is available for any such tunnels, please produce documents sufficient to show the cost per linear foot of any tunnel construction or removal performed anywhere on LNW's system for each year, from, and including, 2000 to the present.

88. Documents sufficient to show culvert/drainage pipe locations (i.e., railroad milepost), size (diameter), length, number of tracks crossed, type, and cost of material and installation for each, for LNW's system in the SARR States.

89. For each year, from, and including, 2000 to the present, please produce documents which contain the following information with regard to LNW's system's highway and railroad crossings at-grade:

- a. The various sizes, compositions and costs per linear foot of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot of a four-lane public highway crossing over a single line of track;

- d. The cost of signs for a private road crossing (if necessary);
- e. The cost of signs for a public highway crossing;
- f. The cost of each of the different types of protective devices identified in the response to Request for Production No. 90 *g.*, *infra*.
- g. A list identifying each components required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to *g.* above and the cost of installation for each year or partial year, from, and including, 2000 to the present; and,
- i. Any additional costs incurred.

90. Documents in a computer readable format, if available, containing the following information for each LNW at grade highway crossing on LNW's system in the SARR States:

- a. Geographic location, *i.e.*, city, county and state;
- b. Rail location, *i.e.*, railroad, line name and milepost;
- c. Width;
- d. Length;
- e. Type of construction;
- f. Number of tracks;
- g. Type of protective devices;
- h. Date of initial installation at the location; and,
- i. Total cost of the initial installation and the amount borne by LNW, if any.

91. For each year, from, and including, 2000 to the present, produce documents containing the following information with regard to LNW's hot bearing and dragging/failed equipment detectors ("FED"):

- a. The criteria for determining the appropriate spacing of the devices along the main lines; and,
- b. The location of FEDs for LNW's system in the SARR States.

92. Documents listing the items, the cost of each item and the quantity of each item installed on the LNW's system related to the construction and (during each of the years or partial years from, and including, 2000 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the LNW's system. Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation.

93. Documents sufficient to show:

- a. The current location of all microwave and land mobile radio towers serving LNW's system in the SARR States;
- b. The total number of route miles on LNW's system that are covered by microwave communications in the SARR States;
- c. The number of communication paths and their purpose for each tower identified in a.;
- d. The height of each tower structure identified in a. or the total of height of the tower if the tower is atop another structure;
- e. The acres of land owned or leased by LNW at each microwave and land mobile radio tower location;
- f. The cost of purchasing or leasing (on an annual basis) each parcel identified in e.;
- g. The cost and manufacturer of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system on LNW's entire system during each of the years and partial years, from, and including, 2003 to the present; and,
- h. The annual spot maintenance costs incurred by LNW for the microwave and/or land mobile radio tower communications system per tower and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

94. Documents sufficient to describe the functionality, operation and costs, during each of the years and partial years, from, and including, 2000 to the present, of any

communications system other than microwave towers used to transmit data from devices such as two-way radios, FEDs, AEI scanners and EOTDs across all or any part of LNW's system.

95. Documents sufficient to show the location, linear feet, and type of fencing (e.g., snow fence) currently in place on any of portion of LNW's system (including yards and other facilities) in the SARR States.

96. Documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), and original cost of each facility located on any portion of LNW's system in the SARR States that falls within each of the following categories of facilities:

- a. Roadway Maintenance Facilities;
- b. Locomotive Maintenance Facilities;
- c. Locomotive Servicing Facilities;
- d. Administrative Facilities;
- e. Auto Ramps;
- f. Intermodal Facilities;
- g. Rail Yards;
- h. Dispatch Centers;
- i. Freight Car Repair and Maintenance Facilities;
- j. Scales;
- k. Wastewater Treatment Plants;
- l. Snowshed Facilities; and,
- m. Train, Yard and Engineman Facilities.

96. Copies of the most current land valuation maps for LNW's rail lines located in the SARR States, and all documents (including, but not limited to, deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

97. Documents identifying all donated rights of way and/or land grants (including easements) obtained by LNW or LNW's predecessors in connection with the construction of any rail lines or facilities located in the SARR States.

98. All documents related to any sale, appraisal, abandonment and/or acquisition of land (improved and unimproved) that LNW completed in the SARR States, including, but not limited to, documents showing the location of the parcel, size of the parcel, the valuation of the parcel by LNW, the sale or acquisition price, a description of any improvements to the parcel, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

99. Documents showing the ad valorem tax that LNW paid for each year and partial year, from, and including, 2003 to the present to each of the SARR States together with documents showing the total route-miles and total track-miles LNW owned and/or owns in each of these states for each year and partial year, from, and including, 2003 to the present.

100. Documents sufficient to show the following with respect to grading construction activities undertaken at any time on any line segment of LNW's system located in the SARR States:

- a. Number of cubic yards of excavation of:
 - (i.) Common earth;
 - (ii.) Loose rock; and,
 - (iii.) Solid rock;
- b. Number of cubic yards of borrow of:

- (i.) Common earth;
 - (ii.) Loose rock; and,
 - (iii.) Solid rock;
- c. Grading construction data for each construction specification measured by LNW including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;
 - d. Number of route miles, separated between single track main and double track main, corresponding to the cubic yard information described in paragraphs (i.) through (iii.) of subparts a. and b. of this Request;
 - e. Number of track-miles corresponding to the cubic yards in paragraphs (i.) through (iii.) of subparts a. and b. of this Request;
 - f. All of the different types of equipment (and the associated tasks) used to:
 - (i.) Excavate common earth;
 - (ii.) Excavate loose rock;
 - (iii.) Excavate solid rock; and,
 - (iv.) Obtain borrow material;
 - g. Linear feet of pipe installed for lateral drainage;
 - h. Number of cubic yards of rip rap placed for the protection of the roadway;
 - i. Location and type of retaining walls;
 - j. Construction method, including, but not limited to, the number of cubic yards of masonry or other similar material used for retaining walls;
 - k. Number of acres cleared;
 - l. Number of acres grubbed; and,
 - m. Number of acres seeded.

101. To the extent LNW incurred any of the following expenses during the years 2000 to the present, produce documents sufficient to show the average costs LNW incurred during each year for the following:

- a. LNW's cost per cubic yard of excavation for:
 - (i.) Common earth;
 - (ii.) Loose rock; and,
 - (iii.) Solid rock;
- b. LNW's cost per cubic yard of borrow for:
 - (i.) Common earth;
 - (ii.) Loose rock; and,
 - (iii.) Solid rock;
- c. LNW's cost per cubic yard of rip rap (installed), separated between material and labor;
- d. LNW's unit cost for each material used for retaining walls, separated between material and labor;
- e. LNW's gross cost per acre for clearing timber;
- f. Any adjustments to LNW's cost per acre for clearing timber or for clearing by burning;
- g. LNW's cost per acre for grubbing;
- h. LNW's cost per acre for seeding;
- i. LNW's cost per acre for weed spray;
- j. LNW's cost per hour or per mile for brush cutting; and,
- k. LNW's cost per square yard for geotextile fabric.

102. Documents sufficient to show the following for each construction and rehabilitation project which exceeded \$500,000 in cost and was completed by LNW, or an outside contractor acting on LNW's behalf, since January 1, 2000:

- a. The date the project was started;
- b. The date the project was completed;

- c. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs;
- d. A complete copy of the Roadway Completion Report or any successor document; and,
- e. All invoices underlying each AFE and/or Roadway Completion Report.

103. All documents relating to any contribution by any governmental and/or quasi-governmental entity (including, without limitation, AMTRAK) to construction, upgrading, maintenance and/or operating expenses on any of LNW's rail lines located in the SARR States (including, but not limited to, any contribution related to the construction or maintenance of at grade or grade separated crossings).

104. All studies, analyses and other documents from January 1, 2001 to present in LNW's possession analyzing or related to the transportation of commodities to Destination from the Origins or On-junctions (a) by a rail carrier(s) other than LNW, and (b) by any mode of transportation other than rail. If no such documents exist, please confirm same in the response to this Request.

105. All studies, analyses and other documents in LNW's possession created on or after January 1, 2001, analyzing or related to traffic volumes moving to Destination by rail from any area other than Origins or On-junctions.

106. All inflation and/or rail cost adjustment estimates or calculations in LNW's possession and/or that LNW prepared or caused to be prepared or purchased for each year or partial year, from, and including, 2003 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring capital; and,

- b. General expenses, including, but not limited to, asset, equipment and labor expense.

107. Documents which identify the locomotive tonnage ratings (*e.g.*, horsepower per trailing ton) by line segment for LNW's rail lines in the SARR States.

108. Documents relating to the development of the methodology for the calculation and imposition of any fuel surcharge, including, but not limited to:

- a. Documents related to the selection of the benchmark for the calculation of the surcharge;
- b. Documents related to the decision to calculate the surcharge based on LNW's fuel surcharge methodology; and,
- c. All analyses, studies or other documents which address the relationship, if any, between the application of the surcharge to any specific shipment and changes in the actual cost to LNW of the fuel consumed by the locomotives used in that (those) shipment(s).

109. To the extent not produced in response to Request for Production No, 108, please produce all documents which relate to the consideration of alternative fuel surcharge methodologies to that actually used by LNW, and/or to the consideration of prospective changes or amendments to the fuel surcharge methodology used by LNW.

110. All documents that include or reflect any analysis, including, but not limited to, the financial impact or operational impact on LNW and/or Albemarle of:

- a. The non-signatory contract with Albemarle allegedly terminated in December, 2005;
- b. The termination/alleged termination of the non-signatory contract with Albemarle allegedly terminated in December, 2005;
- c. Tariff 8002-E;
- d. The establishment or change of any service terms since August 1, 2004;
- e. The termination of switching services to Albemarle; and,

f. The termination of the agreement referred to in LNW's letter of on or about November 23, 2005 to Albemarle.

111. All documents requested in Interrogatory Number 4.

112. All documents requested in Interrogatory Number 5.

113. All documents requested in Interrogatory Number 6.

114. All documents requested in Interrogatory Number 24.

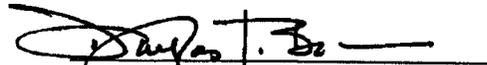
115. All documents relating to any factual statement in the Petition by Albemarle with which LNW does not agree and/or otherwise disputes.

116. All documents relating to the non-signatory contract that LNW allegedly terminated in December 2005, and/or relating to the termination/alleged termination of such non-signatory contract.

117. A copy of each and every LNW document retention policy in effect at any time after January 1, 2000.

Respectfully Submitted,

ALBEMARLE CORPORATION



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501-372-5800

DATED: February 6, 2006

CERTIFICATE OF SERVICE

I, Claudette Tang-Kwok, a secretary at the law firm of Keller and Heckman LLP hereby certify that on this 6th day of February, 2006 I have served the foregoing Albemarle Corporation's First Set of Interrogatories and Requests for Production of Documents to The Louisiana and North West Railroad Company on the following, by the means shown below:

The Louisiana and North West Railroad Company
c/o Chief Legal Officer or Aaron L. Clark, Vice-President and General Manager
304 West Main Street
Homer, LA 71040

Via UPS Overnight Delivery (c/o Aaron L. Clark, Vice-President and General Manager)
and via electronic mail to alclarklnw@bellsouth.net

John Dewey Watson
Friday, Eldredge & Clark
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201
Attorney for The Louisiana and North West Railroad Company

Via FedEx Overnight Delivery, and via electronic mail to watson@fec.net

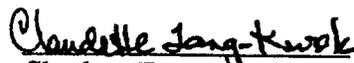

Claudette Tang-Kwok

EXHIBIT G

IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
6th DIVISION

ALBEMARLE CORPORATION

PLAINTIFF

v.

Case No. CIV-2005- 261-6

THE LOUISIANA & NORTH WEST
RAILROAD COMPANY

DEFENDANT

**PETITION FOR TEMPORARY RESTRAINING ORDER
AND OTHER INJUNCTION RELIEF**

COMES NOW, Albemarle Corporation ("Albemarle"), by and through its undersigned counsel, and for its Petition for Preliminary Injunction and Permanent Injunction, states:

PARTIES

1. Albemarle is a Virginia corporation with administrative offices located in Baton Rouge, Louisiana. Albemarle's primary place of business in the State of Arkansas is located in Columbia County, Arkansas. Albemarle is authorized to do business in the State of Arkansas.

2. Defendant, The Louisiana & North West Railroad Company, is a Louisiana corporation registered to do business and in good standing in the State of Arkansas. Defendant's registered agent for service of process within the State of Arkansas is The Corporation Company, located at 425 West Capitol Avenue, Suite 1700, Little Rock, Arkansas, 72201.

JURISDICTION AND VENUE

3. The dispute between the parties involves actions that have taken place in Columbia County, Arkansas. Albemarle alleges that Defendant threatens to take action in violation of property rights and interests held by Albemarle concerning real property located in Columbia County, Arkansas. Furthermore, Albemarle alleges that Defendant threatens to take actions in violation of the rights held by Albemarle under and according to the various

FILED FOR RECORD
This 21 Day of Dec. 2005
at 2:45 o'clock P M
JANICE LINKOUS
CIRCUIT CLERK
COLUMBIA COUNTY, ARKANSAS
By [Signature] P.C.

are located on Albemarle's private property, to serve Albemarle as well as for other purposes for which the Defendant may have needed the sidetracks.

63. Albemarle owns a portion of the property upon which the sidetracks are located and has expended monies to build and maintain the sidetracks in reliance upon Defendants continued assurances that the sidetracks would remain available for Albemarle's use to store and transport both processed and raw materials.

64. If Albemarle is not allowed to continue to use the sidetracks to store cars containing its materials, its operations will be terminated indefinitely. **Exhibit T**, Affidavit of Danny Wood, at ¶ 10.

65. Albemarle owns and stores approximately 100 rail cars that are stored and transported on the approximately 6000 feet of sidetrack in dispute in this matter. Without the ability to use the sidetracks to store both full and empty rail cars, Albemarle will be unable to receive raw materials needed in its productions process. In addition, Albemarle will be unable to store finished goods that await shipping. **Exhibit T**, at ¶ 10.

66. Furthermore, if LNW is allowed to follow through with its threatened behavior, Albemarle will be forced to ship certain hazardous materials, as rated by the U.S. Department of Transportation, including chlorine, in tanker trucks across Columbia and Union Counties. **Exhibit T**, at ¶ 11. It is well-recognized that the safest manner in which to receive, store and transport such hazardous materials is by rail car. **Exhibit T**, at ¶ 12.

67. Even if over-the-road tanker truck transport was a safe and viable method to transport such hazardous materials, it is highly unlikely that Albemarle would be able to secure the use of enough properly equipped tank trucks to meet its ongoing need to transport materials. **Exhibit T**, at ¶ 13.