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June 21, 2006

Via Electronic Filing

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

Edward J. Fishman
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Re: STB Docket No. 42097
Albemarle Corporation v. 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 In Opposition to Albemarle's Motion to Partially Lift Abeyance Order** in this proceeding.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward J. Fishman', with a long horizontal flourish extending to the right.

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

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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. 42097

**ALBEMARLE CORPORATION
v.
THE LOUISIANA
AND NORTH WEST RAILROAD COMPANY**

**THE LOUISIANA AND NORTH WEST RAILROAD COMPANY'S
REPLY IN OPPOSITION TO ALBEMARLE'S
MOTION TO PARTIALLY LIFT ABEYANCE ORDER**

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Brendon P. Fowler
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**ATTORNEYS FOR THE LOUISIANA AND
NORTH WEST RAILROAD COMPANY**

Dated: June 21, 2006

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MOTION TO PARTIALLY LIFT ABEYANCE ORDER**

The Louisiana and North West Railroad Company (“LNW”) respectfully submits this Reply in Opposition to the Motion that Albemarle Corporation (“Albemarle”) filed in this proceeding on June 2, 2006 seeking a partial lifting of the current abeyance order to permit Albemarle to engage in discovery against LNW (the “Albemarle Motion”). The Board held this proceeding in abeyance because of its ongoing review in Ex Parte 657 of the stand-alone cost (“SAC”) methodology that would apply to Albemarle’s linehaul rate complaint only if the Board denies LNW’s pending Motion to Dismiss this proceeding. Albemarle has provided no compelling reason why it should be allowed to engage in unspecified discovery at this point, before the Board has ruled on LNW’s Motion to Dismiss and before the Board has completed its review of the SAC methodology. Therefore, LNW strenuously objects to Albemarle’s Motion and urges the Board to deny the relief sought therein by Albemarle.

Albemarle provides no credible support for its claim¹ that it would be “administratively efficient” to allow Albemarle to burden LNW with discovery requests pending the Ex Parte 657 rulemaking and LNW’s Motion to Dismiss. If the Board grants LNW’s Motion to Dismiss, there will be no need for LNW to respond to Albemarle’s discovery requests. LNW’s Motion to Dismiss is premised on jurisdictional and standing issues that LNW believes will moot Albemarle’s request to engage in discovery.

Albemarle’s assertion that the policy and methodology issues under consideration in Ex Parte 657 would have no impact on the relevant discovery in this proceeding² is unsubstantiated and frankly defies logic. The Board decided to hold this and other pending SAC proceedings in abeyance pending the outcome of the rulemaking precisely because of concerns that discovery would be rendered obsolete or unwarranted by changes in the applicable SAC methodology. See STB Docket No. 42097, Albemarle Corporation v. The Louisiana and North West Railroad Company (STB served May 2, 2006)(holding this proceeding in abeyance because Albemarle’s complaint implicates at least one of the issues being addressed in the rulemaking – the calculation of the jurisdictional floor in rail rate reasonableness proceedings); STB Ex Parte No. 657 (Sub-No. 1), Major Issues in Rail Rate Cases (STB served February 27, 2006)(holding all other pending SAC cases in abeyance and suspending discovery in KCP&L case until conclusion of rulemaking because of inefficiencies). Albemarle has provided no legitimate justification for asking the Board to reverse course and treat this proceeding differently from the other proceedings.³

¹ See Albemarle Motion at p. 1.

² See Albemarle Motion at p. 1-2.

³ The Board’s decision to require Albemarle to file a Reply to LNW’s pending Motion to Dismiss is not a proper analogy here, because LNW’s Motion to Dismiss raises jurisdictional and ripeness considerations that are not dependent on the outcome of Ex Parte 657.

Albemarle itself felt compelled to file comments in Ex Parte 657 in recognition of the impact the Board's rulemaking proceeding could have on the SAC standards applicable to its linehaul rate complaint.⁴ It now seeks to disavow that position in order to burden LNW with discovery requests that would be unnecessary if LNW's Motion to Dismiss is granted or that would be irrelevant if the SAC rules are modified by the Board.⁵ The Board should not condone Albemarle's attempt to impose undue burdens on LNW without a compelling justification. Albemarle's desired approach will only lead to greater inefficiencies as the parties squabble over the relevance of various Albemarle requests and the Board is forced to expend additional resources adjudicating such disputes.

Albemarle's implicit suggestion⁶ that the discovery relief requested here by Albemarle supports the objectives of both parties is outright misleading. As Albemarle knows, LNW believes that Albemarle's linehaul rate complaint is without merit and was artificially generated by Albemarle at the proverbial "Eleventh Hour" before mediation in order to force LNW into an unfavorable settlement of the issues in dispute in Docket No. 42096. As Albemarle also knows, LNW has no interest in engaging in discovery in this proceeding or expediting the Board's consideration of Albemarle's SAC challenge to LNW's linehaul rates at this point given LNW's Motion to Dismiss and the pending Ex Parte 657 rulemaking. This Motion appears to be Albemarle's latest ploy to increase its leverage on LNW for settlement purposes.

Although Albemarle on page 2 of its Motion accurately quotes snippets from the Motion

⁴ LNW did not feel that Albemarle's self-serving comments in Ex Parte 657 even justified a response from LNW.

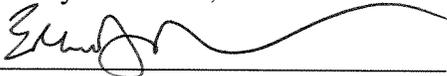
⁵ If history is any guide, LNW fully expects Albemarle to serve extremely detailed and burdensome discovery requests on LNW. Albemarle served 25 interrogatories and 116 document requests on LNW in the Docket No. 42096 proceeding.

⁶ See Albemarle Motion at 2 (where Albemarle claims that "both parties share the desire for an un-delayed resolution" of this proceeding and the Docket No. 42096 proceeding).

to Reopen that LNW filed with the Arkansas federal district court on May 22, 2006, Albemarle fails to inform the Board that LNW's quoted statements about being "stuck in limbo waiting to hear from the STB" related only to the intraplant switching, storage and weighing issues in Docket No. 42096 that were referred to the Board by that federal court.⁷ LNW is seeking an expedited resolution of those issues by the Board because it continues to switch and store highly hazardous chemicals on its property and within Albemarle's South Plant without adequate compensation or indemnity and insurance protection from the catastrophic liability exposure that LNW faces as a result of those activities. LNW believes that Albemarle's linehaul rate complaint is without merit and should be dismissed before LNW is forced to respond to burdensome discovery requests from Albemarle.⁸

For the foregoing reasons, LNW urges the Board to reject Albemarle's Motion to Partially Lift the Abeyance Order in its entirety. The Board should not allow Albemarle to besiege LNW with voluminous and irrelevant discovery requests while LNW's Motion to Dismiss and the Ex Parte 657 rulemaking are pending before the Board.

Respectfully submitted,

By: 

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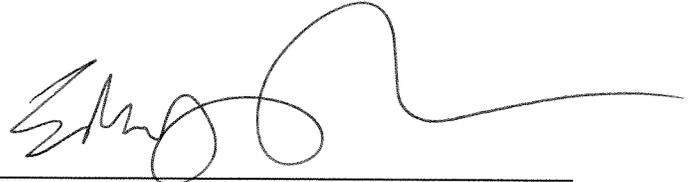
⁷ LNW's Motion to Reopen asked the federal court to lift the stay in that proceeding with respect to the pipeline issues in dispute between the parties. The court recently denied LNW's request.

⁸ Albemarle claims that it is "at risk" during the pendency of this proceeding (see Albemarle Motion at 2) but completely ignores the significant hazardous material risks that LNW continues to bear on Albemarle's behalf while the disputes between the parties are mired in litigation.

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2006 a copy of the foregoing LNW Reply In Opposition
To Albemarle Motion To Partially Lift Abeyance Order was served by electronic mail on:

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A handwritten signature in black ink, appearing to read 'E. Fishman', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal tail.

Edward J. Fishman