



Kirkpatrick & Lockhart Nicholson Graham LLP

1601 K Street, N.W.
Washington, DC 20006-1600
202.778.9000
Fax 202.778.9100
www.klmg.com

May 8, 2006

Via Electronic Filing

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

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@klmg.com

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 Motion to Dismiss Complaint and Reply In Opposition To Request for Consolidation**. A separate **Answer** to the Complaint is being filed simultaneously under separate cover.

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)

**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
MOTION TO DISMISS COMPLAINT
AND REPLY IN OPPOSITION TO REQUEST FOR CONSOLIDATION**

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

**ATTORNEYS FOR THE LOUISIANA AND
NORTH WEST RAILROAD COMPANY**

Dated: May 8, 2006

**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
MOTION TO DISMISS COMPLAINT
AND REPLY IN OPPOSITION TO REQUEST FOR CONSOLIDATION**

Defendant The Louisiana and North West Railroad Company ("LNW") respectfully submits this Motion to Dismiss the Complaint filed by Albemarle Corporation ("Albemarle") and Reply in Opposition to Albemarle's request to consolidate this proceeding with the separate declaratory order proceeding initiated by Albemarle in Docket No. 42096. LNW is filing simultaneously under separate cover its Answer to the Complaint.

I. SUMMARY OF ARGUMENT

Albemarle's stand-alone cost ("SAC") challenge to the reasonableness of LNW's Rule 11 linehaul rates for carload traffic is Albemarle's latest ploy in its ongoing dispute with LNW over intraplant switching, car storage and other property and services provided by LNW at Albemarle's South Plant in Ethyl, Arkansas (the "South Plant"). The Complaint is Albemarle's most recent attempt to force LNW to settle the dispute on unfavorable terms by imposing

substantial costs on LNW to defend a baseless SAC complaint involving only a few carloads of traffic. LNW respectfully requests that the Board dismiss the Complaint in order to prevent the misuse by Albemarle of the STB's statutory processes for its own negotiating leverage against a much smaller company.

LNW also opposes Albemarle's request to consolidate this proceeding with the declaratory order proceeding in Docket No. 42096. These two separate proceedings involve substantially different underlying facts and legal standards, and imposing a six-month freeze on the resolution of the dispute in Docket No. 42096 would only harm LNW without any corresponding benefit to the Board or the public interest.

II. BACKGROUND

LNW is a small, Class III railroad based in Homer, Louisiana that provides linehaul service to a handful of customers on its 62.6-mile line of railroad between McNeil, Arkansas and Gibsland, Louisiana. LNW interchanges all originating and terminating traffic on its line with the Union Pacific Railroad Company ("UP") in McNeil or the Kansas City Southern Railway Company ("KCS") in Gibsland.

One of LNW's customers is Albemarle, a large multinational corporation that operates chemical production facilities around the world (including 7 different facilities in the United States). LNW provides linehaul service to and from Albemarle's South Plant, which is located about 13 miles from the UP interchange in McNeil and about 49 miles from the KCS interchange in Gibsland. LNW interchanges traffic originating or terminating at the South Plant with both Class I carriers, although recently most of this traffic has been moving over the KCS connection.

In 2005, LNW delivered 1,319 carloads of inbound traffic to the South Plant. Nearly half of these inbound deliveries (588 carloads) were tankcars of chlorine, a highly hazardous

chemical that many railroads are reluctant to handle these days because of the significant liability risk exposure. Most of the other inbound traffic that LNW delivered to the South Plant in 2005 was comprised of other hazardous chemicals. In 2005, LNW hauled 112 carloads of outbound traffic from the South Plant, the bulk of which contained hazardous chemicals.

Therefore, LNW hauls mostly outbound rail traffic from the South Plant and most of this traffic is highly hazardous material, including significant amounts of chlorine. LNW handles these hazardous carloads in linehaul service over very lightweight track (75 pound rail) between the South Plant and either McNeil and Gibsland. LNW also allow Albemarle to store a significant amount of such hazardous materials on LNW's own tracks and property near the South Plant, and LNW provides intraplant switching of such hazardous materials for Albemarle at the South Plant.

LNW is extremely concerned about the significant risks that it incurs in handling such hazardous materials over 75 pound rail on its linehaul route and other tracks, particularly on the longer haul between the South Plant and Gibsland. LNW realizes that one derailment of a train carrying chlorine cars could potentially wipe out a small town along its route, and almost certainly would wipe out the finances of the railroad. Unlike Albemarle or LNW's Class I interchange partners, LNW does not have the financial resources to absorb such liability. Nonetheless, LNW continues to provide reliable linehaul service to the South Plant.

III. MOTION TO DISMISS COMPLAINT

A. Extremely Limited Subset of Actual or Potential Traffic At Issue

LNW respectfully urges the Board to dismiss Albemarle's purported SAC challenge to the reasonableness of certain LNW linehaul rates that have or could apply only to an extremely small subset of the linehaul traffic that LNW hauls to and from the South Plant. Specifically,

Albemarle seeks to initiate a stand-alone cost (SAC) review of LNW's local Rule 11 rates with respect to carload traffic originating or terminating at the South Plant that is preceded or followed by a movement under § 10709 confidential contracts with LNW's Class I connections and other participating railroads. As explained in further detail below, LNW believes that only one carload of traffic moved under those rates since they became effective in March 2006.

Albemarle is limited to challenging LNW's local rates on this limited subset of traffic under the standards set forth in the Bottleneck Decisions.¹ Albemarle cannot challenge LNW's division of a § 10709 contract rate with participating railroads, which is the means by which most carload traffic originating or terminating at the South Plant has moved historically and continues to move today. See Verified Statement of Galen White, attached hereto, at 1 ("White VS"). Albemarle also cannot challenge the reasonableness of LNW's share of joint or proportional through rates with its connecting railroads unless Albemarle challenges the entire rail transportation rate, which it has not elected to do here. Therefore, Albemarle's SAC rate complaint is based on one carload of historical traffic and pure speculation about whether future movements to or from the South Plant may move under confidential contracts that exclude LNW.

B. Albemarle Appears to Have Artificially Generated This Controversy

The carload traffic handled by LNW that originates or terminates at the Albemarle South Plant has historically moved under joint through rates that are negotiated among LNW, its Class I connections and any other participating railroads and then memorialized in a confidential contract with the shipper and a separate confidential agreement among the participating railroads

¹ See Central Power & Light Co. v. Southern Pac. Transp. Co., 1 S.T.B. 1059 (1996) ("Bottleneck I"), clarified, 2 S.T.B. 235 (1997) ("Bottleneck II"), aff'd sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999) ("MidAmerican") (collectively, the "Bottleneck Decisions")

that specifies the division of the combination rate. White VS at 1. These contracts, and the divisions among the railroads pursuant to these contracts, are not subject to STB jurisdiction. See 49 U.S.C. § 10709.

LNW has historically published Rule 11 rates (i.e., local rates that apply only to traffic moving between points on LNW's line of railroad between McNeil and Gibsland and not as part of a through route) in a public tariff. These Rule 11 rates are currently set forth in Freight Tariff LNW 4030-A, which is the tariff challenged by Albemarle in this proceeding. White VS at 1-2.

LNW makes these Rule 11 rates available as default rates to any prospective shipper that is not offered a contract rate or joint through rate by LNW and its connecting carriers. LNW's Rule 11 rates to and from the South Plant, as currently set forth in Freight Tariff 4030-A, are significantly higher than the LNW division of a contract rate or joint through rate that LNW negotiates with its connecting carriers and then offers to Albemarle and other shippers. White VS at 1-2; see MidAmerican, 169 F.3d at 1103 note 2 (noting that local rates "are seldom used and are generally significantly higher" than contract rates).

LNW believes that only one (1) carload of traffic originating or terminating at the South Plant has moved under the Rule 11 tariff that Albemarle is challenging in this proceeding. White VS at 3-4.² This movement occurred on or about April 4, 2006, well after relations between LNW and Albemarle soured and only weeks prior to the scheduled April 24-25 mediation session between the parties. This movement involved a carload of hazardous chemicals that was hauled by LNW from Albemarle's South Plant to the KCS interchange in Gibsland for subsequent delivery by UP to a consignee in Galena Park, Texas (near Houston). White VS at 3-

² As explained further herein, one additional carload of Albemarle outbound traffic moved under the Rule 11 tariff that LNW had in effect prior to March 15, 2006 (Freight Tariff LNW 4030). White VS at 4.

4. Albemarle elected to move this one carload of outbound traffic under LNW's higher Rule 11 tariff rate even though, only weeks earlier, LNW had offered Albemarle a joint through rate with UP for this same movement from the South Plant to Galena Park. White VS at 3-4.

In the bill of lading for this carload that Albemarle sent to LNW on April 4, Albemarle designated this outbound movement as a Rule 11 rate move over LNW to the KCS interchange at Gibsland and then to the UP at Beaumont, Texas for delivery to destination. White VS at 3. LNW was never given the chance to offer a joint through rate or contract rate over the KCS routing. In addition, Albemarle refused to accept the joint through rate offer with UP that LNW provided Albemarle for this same movement between the South Plant and the UP-served destination. Instead, Albemarle unilaterally elected to have LNW move this carload over a three-carrier routing (LNW-Gibsland-KCS-Beaumont-UP) instead of the available two-carrier routing (LNW-McNeil – UP). White VS at 3-4. Although LNW does not know what Albemarle or its customer paid for the three-carrier move via KCS, LNW believes it is likely that the total rate was more than the joint through rate that LNW offered Albemarle only weeks earlier to route this traffic over the UP interchange and then direct to the UP-served consignee. White VS at 3-4.

Similarly, the one carload of hazardous material from the South Plant that Albemarle moved under LNW's prior Rule 11 tariff (Freight Tariff LNW 4030) on or about March 13, 2006 involved a similar situation where Albemarle rejected the joint through rate option with UP offered by LNW and unilaterally elected to ship (over the same routing) under LNW's Rule 11 rate. White VS at 4. This carload was moved from the South Plant by LNW to the UP interchange at McNeil and then directly by the UP to the consignee at Galena Park under a "one-time move quote" offered by the UP. White VS at 4. Although LNW does not know the total transportation rate paid by Albemarle or its customer for this movement, LNW believes that it is

unlikely that the total rate was materially less than the joint through rate option offered by LNW over the UP routing. White VS at 4.

Given the timing and unusual nature of these rate and routing decisions by Albemarle, LNW believes that Albemarle artificially “manufactured” this rate complaint by electing to ship one carload via UP and one carload via KCS under LNW’s Rule 11 rates even though a more favorable joint through rate option was offered by LNW for this traffic and even though LNW historically has not held out its Rule 11 rates for Albemarle traffic. According to Galen White, the LNW Marketing Manager who has been responsible for negotiating rates with LNW’s customers and connecting railroads for the last 33 years, the two carload movements described above are the first and only times that Albemarle has ever elected to ship under LNW’s current or prior Rule 11 rates. White VS at 4-5. LNW strongly suspects that Albemarle’s has stirred up this baseless challenge to a very limited subset of LNW linehaul rates, only weeks before the parties were scheduled to mediate the property and intraplant switching dispute between the parties, in order to force LNW to settle those matters on unfavorable terms given the likely costs of defending this SAC case.

LNW does not believe that Albemarle should be allowed to waste LNW’s resources and the resources of the Board in pursuing a SAC rate reasonableness challenge over one carload of traffic that Albemarle routed under LNW Freight Tariff 4030-A, particularly where Albemarle refused to accept a joint through rate option offered by LNW and UP over a more direct routing and intentionally elected to ship under LNW’s Rule 11 rate to artificially generate this Complaint. Even assuming that Albemarle were able to prove that the maximum reasonable rate for this one LNW Rule 11 movement would be zero (an absurd result chosen for illustration

purposes only)³, the total amount of linehaul rates in controversy at this point would amount to less than four thousand dollars.⁴

C. Applicable Precedent Prohibits Albemarle From Pursuing The Complaint

In Bottleneck I, the Board held that when a “bottleneck carrier has established joint or proportional rates for through transportation, it need not also hold out local service for that traffic, and we [the STB] do not intend to entertain complaints designed artificially to produce that end.” Bottleneck I, 1 S.T.B. 1059, 1064-65 (1996). The same result is required here where Albemarle has artificially attempted to generate a controversy by unilaterally electing to move two carloads of outbound traffic under LNW’s Rule 11 rates (one over UP and one over KCS, apparently to cover their bases) while LNW offered a joint through rate for the movement of the same commodity between the same origin and destination in a more direct routing. As the Board stated in Bottleneck I, the Board does “not intend to entertain challenges to single-car rates unless they are the rates actually moving the traffic or intended to move the traffic.” Id. at 1065 footnote 10. Although this determination was made in the context of unit-train service of coal, the same principle applies here. Virtually all of the traffic originating or terminating at the South Plant moves under confidential contracts not subject to Board jurisdiction, and the one recent LNW movement under the Rule 11 rate appears to have been artificially “manufactured” by Albemarle to give it a pretense for filing this Complaint.

³ LNW does not know whether this one Rule 11 movement to the KCS interchange was handled by both KCS and UP under a confidential contract, which is a jurisdictional prerequisite to Albemarle’s ability to challenge that one carload movement under the Bottleneck Decisions.

⁴ LNW realizes that Albemarle and its suppliers could attempt to negotiate long-term private contracts with both UP, KCS and other connecting carriers (excluding LNW) to cover additional traffic flowing to or from the South Plant. However, Albemarle has not introduced any evidence that it currently has such contractual arrangements in place. In fact, the evidence of record indicates that Albemarle’s arrangement with UP was a “one-time move quote” which may not qualify as a § 10709 private contract. In addition, LNW would continue to have the ability (as it does now) to offer more attractive joint through rate quotes or to participate in such contracts.

In fact, it appears as if LNW would have had the ability under the Bottleneck Decisions to refuse to route the Albemarle carload of traffic consigned to Galena Park via the KCS routing. As part of its common carrier obligation, LNW is required to establish rates and routes to move Albemarle's traffic from origin to destination. See 49 U.S.C. § 11101(a). However, LNW has the discretion to establish any rate for such linehaul transportation and may choose to provide such service pursuant to local, proportional or joint rates and via any reasonable through route that it selects with participating carriers. See 49 U.S.C. § 10705(a)(1)-(2); Bottleneck I, 1 S.T.B. at 1064. Once LNW offered Albemarle the joint through rate with UP for that movement, LNW fulfilled its common carrier obligation and was not obligated to move the carload under any other arrangement (even if Albemarle had a confidential contract with KCS to cover the entire movement from Gibsland to Galena Park). See Bottleneck II, 2 S.T.B. at 240-45.⁵

The fact that LNW has published Rule 11 rates does not change the outcome here. As noted in Bottleneck I, even in situations where local Rule 11 rates have been established and are potentially available to construct a through rate and route, such local rates cannot be used in that manner unless the carrier acquiesces. Bottleneck I, 1 S.T.B. at 1064 footnote 9 (citing Routing Restrictions Over Seatrail Lines, 296 I.C.C. 767 (1953)). Therefore, LNW has the initial discretion to offer joint through rates or contract rates on all traffic originating or terminating at Albemarle despite the existence of its Rule 11 rates.

The relief sought here by Albemarle is both speculative and prohibited by the Bottleneck Decisions. The relief is speculative because, aside from the recent actions taken by Albemarle to

⁵ The fact that LNW moved the carload under the Rule 11 rate reflects a rational economic decision to accept a higher rate for its portion of a movement and LNW's historical practice of accepting Albemarle's routing instructions given historically good relations between the parties. LNW certainly retains the right to exercise its rate and routing discretion on Albemarle traffic in order to protect its long-haul, relieve congestion, route highly hazardous material over the shorter haul to or from McNeil, or for any other relevant consideration.

artificially generate this Complaint, the Rule 11 tariff challenged by Albemarle has not been used to move traffic to or from the South Plant. The overwhelming majority of this Albemarle traffic moves under confidential contracts not subject to STB jurisdiction, and Albemarle has not shown that it has confidential contracts in place with all other carriers besides LNW that would replace the current through route arrangements in place. In effect, Albemarle is trying to get the STB to prescribe a local bottleneck rate on the LNW before it has arrangements in place to replace such available through service. See Bottleneck II, 2 S.T.B. at 248 (“While we encourage non-bottleneck carriers to take advantage of opportunities to complete and provide contracts, even if such action might result in a separately challengeable bottleneck-segment rate, shippers cannot, as a matter of law, force that result beforehand by having us prescribe a local bottleneck-segment rate for what is clearly a through service....[This] would run afoul of a bottleneck carrier’s statutorily protected rate and service initiatives.”)

Therefore, the Board should dismiss this Complaint and relieve LNW of the burden of responding to this baseless challenge. The timing of Albemarle’s filing of this complaint, days before the mediation session between the parties was to begin on the issues in dispute in Docket No. 42096, and the amount in controversy (at most \$7,000), strongly suggest that Albemarle has generated this controversy merely to increase its negotiating leverage. The Board should not countenance any such abuse of its processes.

IV. REPLY IN OPPOSITION TO CONSOLIDATION REQUEST

LNW strenuously objects to Albemarle’s request to consolidate this rate complaint proceeding with the declaratory order proceeding initiated by Albemarle in Docket No. 42096, Albemarle Corporation – Petition for Declaratory Order – Certain Rates and Practices of The Louisiana and North West Railroad Company, because (i) the underlying facts and applicable

legal standards involved in the two proceedings are distinct; and (ii) the Board's decision to hold this proceeding in abeyance will unnecessarily delay the resolution of the issues in dispute in Docket No. 42096 to the continuing detriment of LNW.

As previously noted, the instant proceeding involves a purported challenge to the reasonableness of an extremely small subset of LNW's linehaul rates between its Class I interchanges and Albemarle's South Plant. Albemarle seeks to challenge these rates under the stand-alone cost (SAC) methodology. In contrast, the declaratory order proceeding in Docket No. 42096 involves intraplant switching, storage and weighing services provided by LNW after it has completed its linehaul delivery obligations to Albemarle at the South Plant. As a threshold matter, the Board must determine in that declaratory order proceeding whether it has the regulatory authority to regulate the level of LNW's intraplant switching, storage and weighing rates, which LNW believes are outside the Board's jurisdiction to regulate. The underlying facts and legal standards applicable in the two proceedings are completely distinct and therefore no purpose would be served by consolidation.

More importantly, the imposition of a six-month freeze in the declaratory order proceeding will unfairly prejudice LNW, which is being deprived of its lawful right to collect the charges it has established and billed Albemarle for the use of its property and services. The Board has decided to hold this complaint proceeding in abeyance until the conclusion of the rulemaking proceeding in Major Issues in Rail Rate Cases, STB Ex. Parte No. 657 (Sub-No. 1)(“EP 657”).⁶ The EP 657 rulemaking is not scheduled to conclude until approximately November 1, 2006.⁷ The imposition of such a lengthy delay in the declaratory order proceeding

⁶ Albemarle Corporation v. The Louisiana and North West Railroad Company, STB Docket No. 42097 (STB served May 2, 2006).

⁷ Major Issues in Rail Rate Cases, STB Ex. Parte No. 657 (Sub-No. 1), slip op. at 3 (STB served

will allow Albemarle to continue to flout its statutory obligation to pay the charges lawfully established and billed by LNW until such time as Board determines that it has jurisdiction to regulate such charges and that such charges exceed the rate reasonableness standards established by the Board.⁸

Under 49 U.S.C. § 10701(d), LNW has the statutory right to establish any rate for transportation or other services that it provides to Albemarle. This right applies to both linehaul rates and to the intraplant switching, storage and weighing charges at issue in the declaratory order proceeding. Although LNW firmly believes that these charges are not subject to the Board's rate reasonableness jurisdiction, even if the Board reaches the opposite conclusion, Albemarle still is obligated to pay LNW's current charges during the pendency of the reasonableness review under the statutory framework. Albemarle's ability to invoke the protections of the rate reasonableness statute is contingent on the fulfillment of its obligation to pay LNW's lawfully established charges.

Albemarle continues to store significant amounts of highly hazardous chlorine and other hazardous chemicals on LNW's property under antiquated lease agreements that do not adequately compensate LNW for the use of its property and do not provide adequate insurance, indemnification and other protections to LNW for the significant risks that it continues to bear while Albemarle uses LNW's tracks and property as a storage and staging yard for its plant operations. This unacceptable arrangement cannot be allowed to continue for six months while the Board sorts out the methodology it will apply in SAC cases.

Feb. 27, 2006).

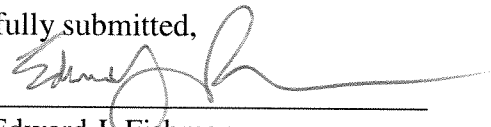
⁸ The federal court in Arkansas issued an order that excuses Albemarle from paying LNW's current intraplant switching, storage and weighing charges until the Board rules on the issues in dispute in Docket No. 42096. LNW believes the federal court was without authority to issue such an order.

V. CONCLUSION

For the foregoing reasons, LNW respectfully requests that the Board issue a decision dismissing the Complaint filed by Albemarle in this proceeding and rejecting Albemarle's request to consolidate this proceeding with the declaratory order proceeding Albemarle initiated in Docket No. 42096. Separately, LNW urges the Board to confirm in Docket No. 42096 that the Board does not have jurisdiction to regulate LNW's intraplant switching, storage and weighing charges as set forth in Tariff LNW-8002-E.

Respectfully submitted,

By: _____


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

VERIFIED STATEMENT

OF

GALEN WHITE

My name is Galen White. I am the Marketing Manager of The Louisiana and North West Railroad Company ("LNW"). I have been the Marketing Manager of the LNW for about 16 years, and have been involved in marketing and pricing for LNW's linehaul services for about the past 33 years. My responsibilities over the years have included establishing LNW's linehaul rates between Albemarle's South Plant and LNW's two Class I connections. I have negotiated these linehaul rates with both representatives of Albemarle and its suppliers and with my counterparts at LNW's connecting carriers.

The carload traffic handled by LNW that originates or terminates at Albemarle's South Plant has, essentially since the Staggers Act of 1980, moved under joint through rates that are negotiated between LNW, its Class I connections (currently, either UP or KCS) and any other connecting carriers in the movement. Typically, the originating carrier publishes a confidential contract with the shipper or payor that specifies the applicable joint through rate. LNW negotiates a division of each such joint through rate with the Class I carriers and the other participating railroads. These divisions are usually set forth in a separate contract or written addendum among the railroads. The respective divisions of LNW and the other railroads involved in such an arrangement are confidential and not disclosed to the shipper or payor.

LNW has historically published Rule 11 rates (i.e., local rates that apply only to movements between points on LNW's line of railroad between McNeil and Gibsland and not as part of a through route) in a public tariff. These Rule 11 rates are currently set forth in Freight

Tariff LNW 4030-A, which was issued on February 17, 2006 and became effective on March 15, 2006. LNW makes these Rule 11 rates available as default rates for any prospective shipper that is not offered a joint through rate or contract rate by LNW and its connecting carriers for the movement of a particular commodity between a particular origin and destination.

LNW's published Rule 11 rates for a particular movement of traffic originating or terminating at Albemarle's South Plant, as currently set forth in Freight Tariff 4030-A, are significantly higher than the LNW division of the joint through rates or contract rates that LNW and the other connecting railroads negotiate with Albemarle or its business partners and then publish in confidential contracts. Until very recent actions by Albemarle, LNW did not handle any traffic originating or terminating at the South Plant under its Rule 11 rates. Instead, LNW handled all such traffic under joint through rates set forth in contracts with its connecting carriers.

LNW maintains its Rule 11 rates in Freight Tariff LNW 4030-A to cover those situations where it does not offer a joint through rate or contract rate to a prospective shipper for a particular movement. If, for example, a shipper asks a rail carrier to move a particular commodity from point A to point B, and no joint through rate is published or otherwise offered to that shipper under a confidential contract, Rule 11 rates are used to cover the revenue requirements of each railroad in the movement. Each rail carrier participating in that movement will issue a separate freight bill to the payor for the charges applicable to that rail carrier's portion of the movement.

Rule 11 rates have historically been higher than joint through rates or contract rates that are negotiated among the railroads and with the shipper. For the LNW, various considerations, including annual carload volume, anticipated volume from the proposed traffic lane, mileage and

other routing considerations (including congestion and track condition), car hire, crew and other anticipated costs, and potential future arrangements with the same shipper or connecting railroads, are all factored into the joint through rate and contract negotiations that take place between LNW, the connecting railroads and the shipper.

I have not reviewed every single bill of lading issued by Albemarle or its business partners for traffic originating or terminating at the South Plant. However, to the best of my knowledge and recollection, only one (1) carload of South Plant traffic has moved under Freight Tariff LNW 4030-A. This movement occurred on or about April 4, 2006 and involved a carload of hazardous chemicals that LNW hauled from Albemarle's South Plant to the KCS interchange in Gibsland for subsequent delivery by UP to Albemarle's consignee in Galena Park, Texas.

Albemarle generates a bill of lading and sends that bill of lading to LNW for each outbound carload that it tenders to LNW for linehaul transportation. In this one case, Albemarle designated the movement in the bill of lading as a Rule 11 rate move over LNW to the KCS interchange at Gibsland and then from KCS to the UP at Beaumont, Texas for delivery to the consignee at Galena Park. See April 4, 2006 Bill of Lading attached hereto as **Exhibit A**.

LNW was never offered the chance to quote a joint through rate or contract rate on this move via KCS. However, about one month earlier (on May 1, 2006), I offered Albemarle's Director of Logistics a specific joint through rate with the UP to move this same commodity between the South Plant and Galena Park. See May 1, 2006 e-mail from Galen White of LNW to Walter Ilg of Albemarle, attached hereto as **Exhibit B** (with confidential joint rate quote redacted). LNW's division of this joint through rate was significantly lower than LNW's Rule 11 rate for this movement.

Nonetheless, Albemarle unilaterally elected to move this carload over a three-carrier routing (LNW-Gibbsland-KCS-Beaumont-UP) instead of the available two-carrier routing (LNW-McNeil – UP). Although I do not know what Albemarle or its customer paid for the three-carrier move via KCS, I believe based on my experience in negotiating these rates that it is likely that the total transportation rate paid by Albemarle or its customer was more than the joint through rate that LNW and UP offered Albemarle to route this traffic over the McNeil interchange and then direct to Galena Park.

In addition, I believe that an additional carload of Albemarle traffic moved under the Rule 11 tariff that LNW had in effect prior to March 15, 2006 (Freight Tariff LNW 4030). This one carload of hazardous material that moved under LNW's prior Rule 11 tariff on or about March 13, 2006 involved a similar situation where Albemarle rejected the joint rate option over UP that I offered to Albemarle on March 1 for this same routing and unilaterally elected instead to ship under LNW's Rule 11 rate (which again was significantly higher than LNW's division of the joint through rate).

This carload was moved from the South Plant by LNW to the UP interchange at McNeil and then directly by the UP to the consignee at Galena Park, Texas under a "one-time move quote" offered by the UP. See Bill of Lading attached hereto as **Exhibit C** and reference therein to "UP OTMQ113154" in the Delivering Carrier box). Although I do not know the total transportation rate paid by Albemarle or its customer for this movement, I believe based on my experience in negotiating such rates that it is unlikely that the total transportation rate was materially less than the joint through rate option offered by LNW and UP.

I am not aware of any other linehaul movements of traffic to or from the South Plant that have moved under LNW's Rule 11 rates as set forth in Freight Tariff LNW 4030 and 4030-A.

Based on my experience, I believe that in both of these isolated cases Albemarle intentionally elected to ship under LNW's Rule 11 rates even though a more favorable joint through rate option was offered by LNW and UP.

STRAIGHT BILL OF LADING - SHORT FORM				SHOW ON ALL BILLINGS TO EXPEDITE PAYMENT →		SHIPPER'S NO. 4500036550	
ORIGINAL-NOT NEGOTIABLE PAGE 1 OF 1 PAGES							
ORIGINATING CARRIER LNW (Rule 11 to Cabstand)						CARRIER'S PAYEE NO.	
RECEIVED, SUBJECT TO INDIVIDUALLY DETERMINED RATES OR CONTRACTS THAT HAVE BEEN AGREED UPON BETWEEN THE CARRIER AND SHIPPER, OR HIS AGENT, IF APPLICABLE, OTHERWISE SUBJECT TO THE CLASSIFICATION AND LAWFULLY FILED TARIFFS IN EFFECT ON THE DATE OF THIS BILL OF LADING. AT							
LOCATION: ETHEL, AR		DATE: 04/04/06		FROM: ALBEMARLE CORPORATION			
the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown, marked, consigned, and described as follows) above which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract agree to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.							
CONSIGNED TO (MAIL OR STREET ADDRESS OF CONSIGNEE-FOR PURPOSES OF NOTIFICATION ONLY) VOPAK INCORPORATED							
DELIVERING CARRIER UP				1500 CLINTON DRIVE			
ROUTE LNW-GLAND-KCS-BMONT-UP (KCS 47226)				DESTINATION GALENA PARK, TX 77547			
				EQ. NUMBER EBAX023116			
ITEM NO.	PRODUCT CODE	PACKAGES	HM	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS		WEIGHT* (SUBJECT TO CORR.)	
01	3207	1 TC	X	ENVIRONMENTALLY HAZARDOUS SUBSTANCES, LIQUID, N.O.S. (AROMATIC AMINE) 9 // UN3082 // PG III MARINE POLLUTANT STCC= 4960131 TN=ETHACURE 300' CURATIVE CLASS 9 PLACARDS W/ 3082 AND MARINE POLLUTANT MARK APPLIED EMERGENCY CONTACT 800-424-9300 HAZMAT STCC=4960131 (CHEMICALS, N.O.I.) ETHACURE 300/BULK G: 110,177.587 KG T: 33,384.398 KG N: 76,793.188 KG DELIVERY DATE: 04/17/2008 DELIVERY TIME: 000000 Fax COA to Linda Cornelius at 713-654-6019. Certificate of Analysis to accompany shipment Please provide expected delivery date so that Vopak can be notified and schedule drumming days.		G 242,900.000 LB T 73,600.000 LB N 169,300.000 LB <i>offered thru Act 3-1-06</i> <i>3700 PC LNW 4030-A + FSK 4-4-06</i>	
SEAL NUMBERS				CUSTOMER PURCHASE ORDER NUMBER 4500036550			
*Where the rates of any of the items listed are dependent on released value, the agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding 400 cents per pound.				Subject to section 7 of conditions of applicable bills of lading, if this shipment is to be delivered to the consignee without recourse on the consignee, the consignor shall sign the following statement: The consignor shall not make delivery of this shipment without payment of freight and all other lawful charges.		This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulation of the Department of Transportation.	
IF CHARGES ARE TO BE PREPAID, WRITE OR STAMP HERE "PREPAID" PREPAID		SHELL GALLONAGE CAPACITY BL NO.		ALBEMARLE CORPORATION SIGNATURE OF CONSIGNOR		Randy Dees SIGNATURE	
Submit bill for freight charges to: ALBEMARLE CORPORATION C/O FREIGHT TRAFFIC SERVICES PO Box 1259 Somerville, NJ 08876		This shipment is correctly described subject to verification in accordance with any applicable agreement with the Weighing and Inspection Bureau having jurisdiction. SHIPPER		Storage in compliance with Tariff No. 8065000 and supplements thereto or releases thereof. ALBEMARLE CORPORATION Randy Dees /80590596/4500036550		AGENT, PER <i>J DeAvila LNWCA</i> 4/4/06	

TRANSPORTATION EMERGENCY. CALL CHEMTREC 1-800-424-9300

Galen White

From: Galen White [galenwhite@bellsouth.net]
Sent: Wednesday, March 01, 2006 8:38 AM
To: Walter Ilg (walter_ilg@albemarle.com)
Subject: DMTDA, Ethyl, AR to Galena Park, TX

Walter,

The UP and LNW can offer a through rate of :
Ethyl, AR to Galena Park, TX routed LNW-McNeil, AR-UP.

, on STCC 49 601 31 from

Rate is subject to fuel surcharge.

Please advise your acceptance and I will gladly publish contract to cover.

Thanks.

Galen

STRAIGHT BILL OF LADING - SHORT FORM				SHOW ON ALL BILLINGS TO EXPEDITE PAYMENT -->		SHIPPER'S NO. 4500036179	
ORIGINAL-NOT NEGOTIABLE PAGE 1 OF 1 PAGES						CARRIER'S PAYEE NO.	
RECEIVED, SUBJECT TO INDIVIDUALLY DETERMINED RATES OR CONTRACTS THAT HAVE BEEN AGREED UPON BETWEEN THE CARRIER AND SHIPPER, OR HIS AGENT, IF APPLICABLE, OTHERWISE SUBJECT TO THE CLASSIFICATION AND LAWFULLY FILED TARIFFS IN EFFECT ON THE DATE OF THIS BILL OF LADING, AT LOCATION: ETHYL, AR DATE: 03/28/06 FROM: ALBEMARLE CORPORATION							
the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown, marked, consigned, and destined as indicated above which shall remain the vessel carrier being indicated throughout this contract as meaning any person or corporation in possession of the property under the contract agree to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.							
CONSIGNED TO (MAIL OR STREET ADDRESS OF CONSIGNEE-FOR PURPOSES OF NOTIFICATION ONLY) VOPAK INCORPORATED							
DELIVERING CARRIER UP (OTM9113154)				1500 CLINTON DRIVE DESTINATION GALENA PARK, TX 77547			
ROUTE LNW-MKNEI-UP						EQ. NUMBER EBAX023205	
ITEM NO.	PRODUCT CODE	PACKAGES	HM	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS		WEIGHT* (SUBJECT TO CORR.)	
01	3207	1 TC	X	ENVIRONMENTALLY HAZARDOUS SUBSTANCES, LIQUID, N.O.S. (AROMATIC AMINE) 9 // UN3082 // PG III MARINE POLLUTANT STCC= 4960131 TN=ETHACURE 300 CURATIVE CLASS 9 PLACARDS W/ 3082 AND MARINE POLLUTANT MARK APPLIED EMERGENCY CONTACT 800-424-9300 HAZMAT STCC=4960131 (CHEMICALS, N.O.I.) ETHACURE 300/BULK G: 112,400.189 KG T: 35,153.409 KG N: 77,248.781 KG		G 247,800.000 LB T 77,500.000 LB N 170,300.000 LB	
SEAL NUMBERS				CUSTOMER PURCHASE ORDER NUMBER 4500036179			
*Where the rates of any of the items listed are dependent on released value, the agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding 400 cents per pound.				Subject to section 7 of conditions of applicable bill of lading, if the shipment is to be delivered to the consignee without recourse on the consignee, the carrier shall then the following statement: The carrier shall not make delivery of the shipment without payment of freight and all other lawful charges.		This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulation of the Department of Transportation.	
IF CHARGES ARE TO BE PREPAID, WRITE OR STAMP HERE "PREPAID" PREPAID		SHELL GALLONAGE CAPACITY	RL NO.	ALBEMARLE CORPORATION SIGNATURE OF CONSIGNEE		Randy Dees SIGNATURE	
SUBMIT BILL FOR freight charges to: ALBEMARLE CORPORATION C/O FREIGHT TRAFFIC SERVICES PO Box 1259 Somerville, NJ 08876		This shipment is correctly described subject to verification in accordance with any applicable agreement with the Weighing and Inspection Bureau having jurisdiction. ALBEMARLE CORPORATION SHIPPER Randy Dees		Outage in compliance with Tariff No. 8068000 and supplements thereto or release thereof. /80583993/4500036179			
TRANSPORTATION EMERGENCY CALL CHEMTREC 1-800-424-9300							

AGENT, PER

At death

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2006 a copy of the foregoing Motion to Dismiss Complaint and Reply in Opposition to Request for Consolidation was served by electronic mail on:

Martin W. Bercovici, Esq.
Keller & Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001
bercovici@khlaw.com

A handwritten signature in dark ink, appearing to read "Edward J. Fishman", is written over a horizontal line.

Edward J. Fishman