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Via Electronic Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
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EXPEDITED CONSIDERATION REQUESTED

Re: STB Docket No. 42097
Albemarle Corporation v. The Louisiana and North West Railroad Company

Dear Secretary Williams:

The Louisiana and North West Railroad Company ("LNW") has received the letter filed by Albemarle Corporation ("Albemarle") on May 18, 2006 in the above-captioned proceeding. In that letter, Albemarle reveals its intent to file a Reply to LNW's pending Motion to Dismiss upon the conclusion of the rulemaking in Ex Parte No. 657 (Sub-No. 1) ("Ex Parte 657"). LNW respectfully urges the Board to order Albemarle to file its Reply within the 20-day period set forth in the Board's regulations at 49 C.F.R. § 1104.13(a).

Albemarle has failed to provide any valid justification for its unilateral decision to defer filing its Reply for approximately 6 months, when the Ex Parte 657 proceeding is scheduled to conclude.¹ The Ex Parte 657 rulemaking has absolutely no relevance to the issues raised in LNW's Motion to Dismiss. The Board's ongoing evaluation of the standards to apply in the stand-alone cost (SAC) analysis does not have any bearing on the jurisdictional and ripeness arguments raised by LNW.

Similarly, Albemarle's purported reliance on the Board's May 2, 2006 order holding this proceeding in abeyance is not an adequate justification for the extraordinary extension sought here by Albemarle. The Board did not know at the time of issuance of its order that LNW would

¹ Major Issues in Rail Rate Cases, STB Ex. Parte No. 657 (Sub-No. 1), slip op. at 3 (STB served Feb. 27, 2006)(stating that rulemaking is not scheduled to conclude until November 1, 2006).



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be moving to dismiss the linehaul rate complaint based on grounds that do not involve the issues under consideration in Ex Parte 657.

As explained in greater detail in LNW's Motion to Dismiss, the linehaul traffic that LNW hauls to and from the South Plant has historically moved under private contracts that are not subject to STB jurisdiction under 49 U.S.C. § 10709. With the exception of one recent carload of outbound traffic that Albemarle appears to have intentionally routed under LNW's current Rule 11 tariff, LNW continues to handle all linehaul traffic to and from the South Plant under private contracts that remain in place for the durations of their terms. All of these private contracts involve LNW's connecting carriers, many of these private contracts do not expire until 2007, and the substantial majority of these private contracts are for the account of shippers or receivers other than Albemarle.

Albemarle's decision to delay filing a Reply to the LNW Motion to Dismiss provides further confirmation of LNW's suspicions about the true motive of Albemarle's complaint in this proceeding. LNW believes that Albemarle is using its linehaul rate complaint as a negotiating ploy in the ongoing dispute between the parties about intraplant switching, storage and weighing at the South Plant (activities which take place after the linehaul movement has been completed). Albemarle appears content to allow the costly proposition of defending a SAC complaint to hang over the head of LNW for at least 6 more months, while giving Albemarle additional time to shore up its response to the Motion to Dismiss.

The Board should not allow Albemarle to flout the Board's rules and regulations in this manner. Albemarle should be held answerable to the legitimate concerns raised by LNW in its Motion to Dismiss. At a minimum, Albemarle should be required to explain its apparently irrational economic behavior in selecting a rate and route for one outbound movement from the South Plant that likely resulted in a higher total cost to Albemarle. In addition, Albemarle should be required to provide evidence that Albemarle has executed private contracts with LNW's connecting carriers for a substantial volume of traffic moving to or from the South Plant under LNW's Rule 11 rates. Moreover, Albemarle should be required to demonstrate that such contracts would trump the statutory right of LNW and other connecting carriers under 49 U.S.C. § 10701(c) to offer a joint rate and routing for a particular through movement.² Albemarle must

² 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"); see also FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Finance Docket No. 33467 (STB served December 16, 1997) (requiring UP to provide proportional rates to gateways, but only with respect to traffic for which FMC had already executed private contracts with connecting carriers for movement from the gateways to final destination).



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make these showings and respond to LNW's other arguments in its Motion to Dismiss before this costly and expensive proceeding should be allowed to continue.

In summary, Albemarle has failed to provide good cause why it should be given another 6 months to continue manufacturing its linehaul rate complaint against LNW in light of the objections set forth in the Motion to Dismiss. Therefore, LNW respectfully requests that the Board order Albemarle to file a Reply by May 30, 2006, which is the date by which Albemarle's Reply is due under the Board's regulations. LNW seeks expedited consideration of this request given the amount of time remaining in Albemarle's response period and the legitimate jurisdictional and ripeness concerns raised by LNW in its Motion to Dismiss.

Respectfully submitted,

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Company

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