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May 23, 2006

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

Writer's Direct Access  
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Re: Albemarle Corporation v. The Louisiana and North West Railroad Company,  
STB Docket No. 42097; REPLY TO MOTION TO ORDER REPLY

Dear Secretary Williams:

By letter dated May 19, 2006, The Louisiana and North West Railroad Company ("LNW") has requested the Board in effect to partially lift its stay placed on this proceeding and to order Albemarle Corporation ("Albemarle") to file its Reply to LNW's Motion to Dismiss the above-captioned complaint. Albemarle respectfully submits this Reply to LNW's "Motion to Order Reply."

Albemarle submitted a courtesy notification to the Board on May 18, 2006, noting the LNW Motion to Dismiss and informing the Board that Albemarle would abide by the Board's Decision served May 2, 2006 holding this proceeding in abeyance and so would await the end of the stay of the proceeding to submit its Reply.

LNW assails Albemarle's notice as a "unilateral decision to defer filing its Reply for approximately 6 months" and that Albemarle "failed to provide any valid justification".<sup>1</sup> LNW,

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<sup>1</sup> LNW certainly understands unilateral and arbitrary conduct in Board proceedings. In the Docket No. 42096 proceeding, initiated under court referral and in accordance with Board policy and precedent that petitions for declaratory orders initiated on court referral are handled under the complaint procedures (*see Delegation of Authority—Declaratory Order Proceedings*, 5 I.C.C.2d 675, 676 (1989), cited in *Martin Gas Sales, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Union Pacific Railroad Company*, STB Docket No. 43082 (Office of Proceedings, served Nov. 14, 2003)), Albemarle served discovery on LNW. LNW's response was that 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" LNW would not respond to the discovery. LNW Reply, STB Docket No. 42096 at 13, n. 19 (Feb. 28, 2006). The filing fee is a matter solely between the Board and Albemarle, and it is the complainant that determines the methodology to be used to address the reasonableness of rates and charges. Ironically, whereas Albemarle has filed a formal complaint, accompanied by the formal complaint filing fee, and has sought consolidation with the Docket No. 42096 proceeding, LNW not only has not answered Albemarle's discovery but rather has opposed consolidation.

KELLER AND HECKMAN LLP

Hon. Vernon A. Williams

May 24, 2006

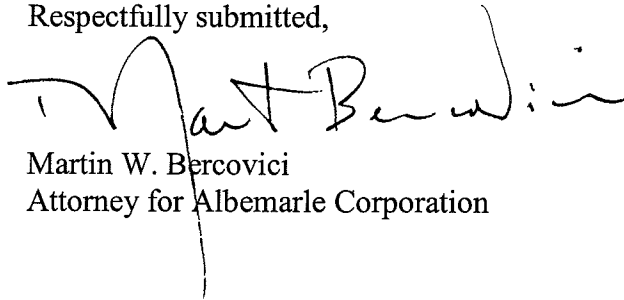
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while using the pretext of its Motion to Order Reply as an opportunity to reargue its Motion to Dismiss, accuses Albemarle of "flout[ing] the Board's rules and regulations."

Albemarle did not make a "unilateral decision" with regard to the timing of its reply, and did not act without justification. Rather, the Board's Decision of May 2, 2006 having been written in plain English, Albemarle applied customary rules of construction to the Board's clear, precise and unequivocal language directing this proceeding to be held in abeyance "except that LNW is directed to file an answer to the complaint, and a response to Albemarle's request to consolidate this proceeding with the proceeding in STB Docket No. 42096." (Emphasis in Board's Decision.) The Board's Decision did not make allowance for LNW to file a Motion to Dismiss,<sup>2</sup> and LNW neither sought and received leave to file the Motion to Dismiss nor in said Motion requested a lifting of the stay and leave to file such a motion at this time. Albemarle's May 18, 2006 letter was intended to inform the Board that Albemarle understood the Board's Decision of May 2, 2006 and would adhere to its dictates.

Albemarle's notice to the Board was well grounded in the Board's May 2, 2006 Decision, and Albemarle respectfully submits that LNW has not shown good cause for the Board to selectively lift only one portion of the stay order.

Respectfully submitted,



Martin W. Bercovici  
Attorney for Albemarle Corporation

cc: Edward J. Fishman, Esq.

Attorney for The Louisiana and North West Railroad Company (via electronic mail)

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<sup>2</sup> While it technically may be correct that the Board "did not know at the time of issuance of its order that LNW would be moving to dismiss the linehaul rate complaint," the Board certainly knows that "An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint . . .," but also that "A motion to dismiss can be filed at any time during a proceeding." 49 C.F.R. § 1111.5. *Expressio unius est exclusio alterius*. Moreover, there are other procedural aspects of this case, such as discovery, that in LNW's words "do not involve the issues under consideration in Ex Parte 657."