

**Before the  
SURFACE TRANSPORTATION BOARD  
Washington, DC 20423**

**ALBEMARLE CORPORATION v. THE LOUISIANA )      Docket No. 42097  
AND NORTH WEST RAILROAD COMPANY      )**

**MOTION TO PARTIALLY LIFT ORDER  
HOLDING PROCEEDING IN ABEYANCE**

Albemarle Corporation (“Albemarle”) respectfully requests the Surface Transportation Board to partially lift the order holding this proceeding in abeyance to permit the parties to conduct discovery while awaiting completion of the rulemaking in *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No.1).

By Decision served in this proceeding on May 30, 2006, the Board directed Albemarle to file its Reply to the Motion to Dismiss filed by The Louisiana and North West Railroad Company (“LNW”). The Board held that notwithstanding the Ex Parte No. 657 (Sub-No. 1) proceeding, “it is administratively efficient and desirable to consider LNW’s motion to dismiss now rather than when the rulemaking is complete.” While Albemarle accepted the Board’s May 2, 2006, decision to hold matters in abeyance, as suggested in Albemarle’s letter Reply dated May 23, 2006, if the stay is to be lifted for purposes of the motion to dismiss, it further is “administratively efficient and desirable” to allow the parties to conduct discovery notwithstanding the pendency of the rulemaking.<sup>1</sup>

Of the six issues raised by the Board for consideration in the rulemaking, those of potential impact on the outcome of this proceeding are issues of policy and methodology. None

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<sup>1</sup> By rule, the discovery period begins when a complaint is filed. 49 C.F.R. § 1111.8(a).

would affect the discovery relevant to the reasonableness of LNW's rates and charges. The same discovery will be conducted whether the Board adopts, declines or modifies its proposed revisions to the stand-alone cost methodology.

Albemarle continues to be at risk during the pendency of the Board's proceedings. It is important to Albemarle that it understand its relationship with LNW and the degree to which LNW may threaten the existence of the Albemarle South Plant. Whereas the issues in the Arkansas court litigation have been held in abeyance by the court pending resolution of matters before the Board, on May 22, 2006, LNW filed a motion with the Federal District Court requesting that court to reopen its proceedings. Among the reasons asserted by LNW were that "the parties are stuck in limbo waiting to hear from the STB . . ." and "it may be some time before the STB makes its ruling . . ." Accordingly, it is appropriate to move these proceedings along, as it is clear both parties share the desire for an un-delayed resolution of the STB proceedings; and allowing discovery to proceed will significantly aid that effort.

Expedition in the handling and resolution of proceedings under the Board's authority is one element of the Rail Transportation Policy promulgated by Congress.<sup>2</sup> To that end, Congress set decisional deadlines for the Board to issue its decisions in rate adjudications,<sup>3</sup> and the Board has established a procedural schedule for stand-alone cost proceedings<sup>4</sup> and has taken other actions to expedite rate case adjudications.<sup>5</sup> To the same extent that the Board has determined that having Albemarle file its Reply to the LNW Motion to Dismiss currently, rather

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<sup>2</sup> See 49 U.S.C. § 10101(15).

<sup>3</sup> *Id.* at § 10704(c).

<sup>4</sup> 49 C.F.R. § 1111.8(a).

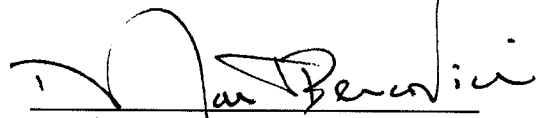
<sup>5</sup> See, e.g., *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, 6 S.T.B. 805 (2003); *Market Dominance Determinations—Product and Geographic Determinations*, 3 S.T.B. 937(1998).

than await the Board's action in the Ex Parte 657 (Sub-No. 1) proceeding, would expedite this proceeding, so too allowing the parties to proceed with discovery at this time would expedite the disposition of this case. Completion of discovery while awaiting the Board's decision on revision of the stand-alone cost procedures would enable the parties to prepare and file their evidence promptly after the Board acts with regard to the methodology for such cases.

Albemarle Corporation respectfully requests the Surface Transportation Board to lift the order holding this proceeding in abeyance to allow the parties to conduct discovery.

Respectfully Submitted,

**ALBEMARLE CORPORATION**



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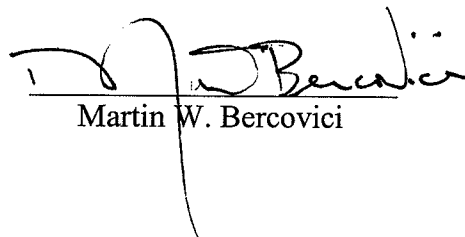
June 2, 2006

# CERTIFICATE OF SERVICE

I, Martin W. Bercovici, hereby certify that on this 2nd day of June, 2006, we have served the foregoing Motion to Partially Lift Order Holding Proceeding in Abeyance on the following by electronic mail:

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