217502

Kirkpatrick & Lockhart Nicholson Graham LLP

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

September 6, 2006

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

**Via Hand Delivery**

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

**Re: S.O. 1526**
**Petitions of Albemarle Corporation for Emergency Service Order and Immediate Relief Under 49 U.S.C. § 721(b)(4)**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is **The Louisiana and North West Railroad Company's Response** to the Second Rebuttal filed by Albemarle in this proceeding.

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

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**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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**S.O. 1526**

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**PETITIONS OF ALBEMARLE CORPORATION**
**FOR EMERGENCY SERVICE ORDER AND IMMEDIATE RELIEF**
**UNDER 49 U.S.C. § 721(b)(4)**

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# RESPONSE OF THE LOUISIANA AND NORTH WEST RAILROAD COMPANY TO ALBEMARLE CORPORATION'S SECOND REBUTTAL

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Edward J. Fishman
Jenice Goffe
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: September 6, 2006

DC-793679 v.3

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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**S.O. 1526**

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**PETITIONS OF ALBEMARLE CORPORATION**
**FOR EMERGENCY SERVICE ORDER AND IMMEDIATE RELIEF**
**UNDER 49 U.S.C. § 721(b)(4)**

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**RESPONSE OF THE LOUISIANA AND NORTH WEST RAILROAD COMPANY**
**TO ALBERMARLE CORPORATION'S SECOND REBUTTAL**

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The Louisiana and North West Railroad Company ("LNW") respectfully submits this Response to the second Rebuttal filed by Albemarle Corporation ("Albemarle") in this proceeding on August 30, 2006 ("Second Rebuttal"). LNW submits this Response in order to correct certain egregious factual misstatements set forth in Albemarle's Second Rebuttal, respond to Albemarle's erroneous challenge to the legitimacy of LNW's factual assertions based on the form rather than the substance of LNW's pleadings, and provide the Board with further clarification of LNW's position in this matter. LNW again urges the Board to deny Albemarle's baseless request to displace LNW from its own property as a result of a continuing dispute between the parties over the applicable charges for intra-plant switching services and related car storage services that are not part of LNW's common carrier obligation and over which the Board does not have jurisdiction.

## I. PROCEDURAL MATTERS

A. LNW's August 25th Reply and This Response Should Be Part of the Record

Due to the emergency nature of the relief sought by Albemarle in the Petitions that it filed in this proceeding on August 18, and the sudden threats made first by Albemarle and then by LNW about the continued provision of intra-plant switching service at the South Plant,[1] LNW immediately filed a letter with the Board on the next business day (August 21) to clarify LNW's position. LNW's August 21st letter ("August 21 Letter") was submitted on an expedited and preliminary basis to inform all relevant parties (i) that LNW would continue to provide intra-plant switching services if Albemarle agreed to pay the requested charges in advance (without regard to the retroactivity issue), and (ii) that the dispute between the parties over intra-plant switching was limited to the applicable rate or charge, not the quality or frequency of service, and thus Albemarle did not qualify for the extraordinary and unprecedented emergency relief that is sought here. LNW filed the August 21 Letter without waiving its right to file a Reply in accordance with 49 C.F.R. § 1146.1(b)(2) and in the interest of immediately clarifying the record given the allegation by Albemarle that LNW was on the verge of taking action that might have a substantial adverse effect on Albemarle.[2]

Albemarle's claim that LNW's August 25th Reply should be stricken from the record is without merit. LNW's Reply was properly filed within the five (5) business days provided under 49 C.F.R. § 1146.1(b)(2) and constituted LNW's full response to the erroneous factual and legal

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[1] As set forth in the Verified Statement of Larry Brooks that is attached hereto as Exhibit A ("Brooks V.S."), Albemarle initially informed LNW that it was reneging on its decision to allow LNW to provide all of the intra-plant switching service at the South Plant and then LNW responded by notifying Albemarle that it was ready, willing and able to perform all such intra-plant switching only if Albemarle agreed to pre-pay for such services at a rate of $400 per car based on a minimum of 8 switches a day, 4 days a week. See Brooks V.S. at 4.

[2] See Albemarle Petition for Emergency Service Order at 1.

claims set forth in Albemarle's Petitions. The fact that Albemarle filed a letter on August 22nd in response to LNW's August 21 Letter is irrelevant, for Albemarle cannot preempt LNW's procedural right to file a Reply under the Board's regulations.

Alternatively, LNW respectfully urges the Board to accept LNW's Reply into the record because it clarifies certain misstatements of fact and law set forth in Albemarle's Petitions and also provides additional relevant facts for the Board's consideration (including a more detailed elucidation of LNW's position with respect to the provision of intra-plant switching and storage services at the South Plant). LNW believes that accepting the Reply is particularly important for purposes of developing a complete record in this proceeding given the expedited nature of the relief requested by Albemarle and the evolving nature of the relevant facts in this proceeding.

For similar reasons, LNW respectfully submits that the Board should accept this Response to Albemarle's Second Rebuttal into the record. As noted herein, this Response corrects certain egregious factual misstatements set forth in Albemarle's Second Rebuttal, responds to and renders moot Albemarle's erroneous challenge to the legitimacy of LNW's factual assertions based on the form of LNW's pleadings, and provides the Board with further information relevant to this matter. It is in the interest of the Board and all other concerned parties to have a complete factual record in this proceeding, particularly given the emergency nature of the relief sought and the conflicting legal positions of the disputants. LNW's Response makes it clear, *inter alia* and despite the obfuscation created by Albemarle's Second Rebuttal, that Albemarle storage tracks A, B, C, D and E are all located on LNW property (see Brooks V.S. at 2), that Albemarle's evidentiary challenges are without merit (see pages 3-7 herein), and that the applicable terms and conditions for intra-plant switching, storage and the handling of highly hazardous materials are at the core of this dispute (see pages 7-15 herein) despite

Albemarle's absurd protestations to the contrary.

B. Albemarle's Claims About The Admissibility of LNW's Evidence Are Misguided

1. FROE 408 Does Not Preclude Evidence Submitted by LNW

There are at least three reasons why the Board should disregard Albemarle's statements about the inadmissibility of settlement discussions. See Second Rebuttal at 3. First, the recent commercial negotiations that LNW initiated between LNW and Albemarle representatives (without the participation of any lawyers)[3] do not qualify as settlement discussions under Federal Rule of Evidence 408 ("FROE 408"). There was no prior agreement or discussion among the participants as to the confidentiality of their discussions or the applicability of FROE 408.[4] The discussions were initiated by LNW in an attempt to reach an agreement going forward on the applicable charges for intra-plant switching.[5] Albemarle has provided no evidence that the involved parties conditioned their participation on the inadmissibility of their discussions in this proceeding or that FROE 408 even applies to the pleadings filed by LNW in this matter.[6]

Second, and contrary to Albemarle's claims, LNW has not made reference to any specific rates or other terms and conditions that were discussed by the representatives of LNW and Albemarle. LNW has made reference to the various threats and proposals made first by Albemarle and then by LNW about the continued provision of intra-plant switching service at the South Plant. These statements were part and parcel of and emanated from the commercial

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[3] See Brooks V.S. at 3.

[4] Id.

[5] Id.

[6] The Board's applicable regulation at 49 C.F.R. § 1114.1 states in pertinent part that the "rules of evidence will be applied in any proceeding to the end that necessary and proper evidence will be conveniently, inexpensively and speedily produced, while preserving the substantial rights of the parties." The regulation makes no specific reference to FROE 408 or the admissibility of settlement discussions in a proceeding of this nature.

discussions initiated by LNW.[7] LNW has made reference to these statements because Albemarle's Petition for an Emergency Service Order is premised entirely on those commercial discussions about intra-plant switching and the pending dispute cannot be understood without such evidence. Albemarle is the party that opened the door to the admissibility of such discussions by using intra-plant switching as a negotiating tool (see LNW Reply at 6) and by basing its request for relief here on the discussions between the parties over the applicable charges for intra-plant switching and the ensuing fallout from the breakdown in those discussions. If the Board strikes all evidence of such recent discussions from the record, it must strike Albemarle's Petition as well because it is founded entirely on the recent discussions between the parties and Albemarle's ultimate refusal to accept LNW's requested charges for providing intra-plant switching service (after the parties had agreed on a mutually acceptable charge). Albemarle cannot be allowed to selectively determine which aspects of such discussions should be revealed to the Board and which should be cloaked to further its own ambitions.

Third, even assuming that FROE 408 applies here and that Albemarle is not estopped by its conduct from challenging the admissibility of evidence about the recent discussions between the parties, the evidence submitted by LNW with respect to such discussions is admissible under FROE 408 because it is not being offered to prove that Albemarle agreed to LNW's request for a specified intra-plant switching charge. See FROE 408 (which only bars admissibility of compromise negotiation statements when offered to prove liability for, invalidity of or amount of a claim). Instead, it is being offered to show that Albemarle has not been negotiating in good faith (for example, by violating its commitment to provide 20-days notice to LNW prior to

[7] See Brooks V.S. at 3-4 (explaining chronology of events leading to Albemarle decision to resume intra-plant switching and LNW response thereto).

resuming its own switching activities and by insisting on the resolution of other issues after the parties had agreed on a mutually acceptable intra-plant switching rate) and to provide the evidentiary context for the threats made by both parties. See, e.g., Athey v. Farmers Ins. Exchange, 234 F.3d 357 (8th Cir. 2000); Coakley & Williams v. Structural Concrete Equip., 973 F.2d 349 (4th Cir. 1992); Cates v. Morgan Portable Bldg. Corp., 708 F.2d 683 (7th Cir. 1985); Uforma/Shelby Bus. Forms, Inc. v. NLRB, 111 F.3d 1284 (6th Cir. 1997). Thus, all such LNW evidence is admissible under FROE 408 and should be considered in this proceeding.

2. Albemarle's Attack on LNW Veracity Elevates Form Over Substance

Albemarle accuses LNW of a "lack of candor" (see Second Rebuttal at 4) because LNW did not submit a declaration to support the factual assertions set forth in LNW's Reply. Albemarle has not cited to any Board regulation that requires LNW to submit such a declaration or similar statement as a condition to the admissibility of its evidence. The fact that Albemarle's August 18, 2006 Petition for an Emergency Service Order contains a blanket, unspecific "Declaration" from Danny Wood does not mean that Albemarle's factual claims are entitled to any more evidentiary weight than LNW's factual claims.[8] Nonetheless, in response to Albemarle's baseless attack on the veracity of LNW's factual assertions, LNW submits the attached Verified Statement of Larry Brooks, the Vice President and General Manager of LNW. The Brooks V.S. attests to the accuracy of the factual representations contained in LNW's prior pleadings in this proceeding and the factual representations contained in this Response.[9]

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[8] LNW also notes that several factual assertions in Albemarle's Second Rebuttal are not specifically supported by the Declaration of Danny Wood attached thereto, which speaks only to three specific issues.

[9] The undersigned lead counsel for LNW also notes that he was on vacation and out of town when the Albemarle Petitions were filed and, given the expedited briefing schedule necessitated by the emergency relief sought by Albemarle, did not have an adequate opportunity to coordinate the preparation of a separate Verified Statement by Mr. Brooks until he returned from vacation

## II. SUBSTANTIVE MATTERS

### A. Albemarle Misstates "Essential Facts"

Albemarle claims that the LNW Reply does not attempt to refute any of the "essential facts" in this proceeding. See Second Rebuttal at 2-4. Albemarle is wrong on two levels. First, LNW does not agree with Albemarle's characterization of the "essential facts" at issue. Second, LNW disagrees with and has previously refuted many of the factual assertions made by Albemarle. For example, Albemarle fails to mention that storage tracks A, B, C, D and E are all located on LNW property and that storage tracks A, B and C are owned by LNW. See Brooks V.S. at 2. In addition, despite its repeated accusations about candor, Albemarle fails to mention that it (not LNW) made the initial move which led to the recent progression of events by reneging on its decision to allow LNW to conduct all intra-plant switching at the South Plant. See Brooks V.S. at 3. Third, Albemarle continues to put a self-serving "spin" on the discussions that took place before the Office of Compliance and Enforcement earlier this year, when LNW's counsel repeatedly objected to the Board's jurisdiction over intra-plant switching and storage rates and did not bind LNW to any perpetual commitment to provide twenty days notice before "effecting any change of service." See Second Rebuttal at 3.

LNW's position that it is ready, willing and able to provide all intra-plant switching at the South Plant or no switching at all is based on very important safety and cost concerns. LNW has repeatedly expressed its concerns to Albemarle about the safety risks posed by having more than one party provide intra-plant switching of hazardous materials at the South Plant. See Brooks V.S. at 4. These concerns are heightened when Albemarle or its third party contractor seeks access to the LNW main line (as is the case here), but significant safety issues are still raised by

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this week.

Albemarle's activities in undertaking its own switching on the east side of the LNW main line. The use by Albemarle of a leased car-mover (not a locomotive or switch engine) to switch loaded tankcars of toxic materials in close proximity to LNW's own operations and property raises significant concerns that have been expressed repeatedly by LNW and by the labor organizations representing LNW employees. See Brooks V.S. at 4-5.

Moreover, LNW is losing money on the limited intra-plant switching operations that it performs when Albemarle conducts its own switching service. See Brooks V.S. at 2. Due to the high cost of fuel and labor involved in such operations, and the extremely low rate of $121 per switch that Albemarle has continued to pay since November 2005 (based on an accounting of switches as determined unilaterally by Albemarle), LNW is not covering its costs of providing limited intra-plant switching for Albemarle. See Brooks V.S. at 2-3. These costs do not account for the significant liability risks that LNW bears when it provides such switching services for Albemarle across LNW property. See Brooks V.S. at 3.

LNW does not believe it is obligated to provide such intra-plant switching and related storage services to Albemarle. However, even if LNW were obligated to provide such services, LNW knows that Albemarle is required to pay LNW's applicable rates or charges under 49 U.S.C. § 10702 in the first instance and may seek reparations only if Albemarle can prove (which LNW strongly doubts) that the Board has rate reasonableness jurisdiction and that LNW's rates are unreasonable. These are the "essential facts" underlying this dispute that Albemarle ignores.

B. Albemarle's Emergency Order Request Is All About Rates

Albemarle's claim that its emergency request for relief "is "not about rates" is patently absurd. Albemarle is not complaining about the adequacy of intra-plant switching services

provided by LNW. This dispute is all about whether Albemarle is required to pay the intra-plant switching rates or charges established by LNW. There has been and will be no "wrongful termination" of switching services by LNW, as Albemarle claims, because LNW is not required to provide such services as part of its common carrier obligation. Even if LNW were required to provide such services (which LNW vigorously disputes), such services are conditioned on Albemarle paying LNW's specified rates or charges under 49 U.S.C. § 10702 in the first instance.

Albemarle has turned the entire statutory framework on its head through its various legal maneuvers against LNW. Albemarle's Petition for an Emergency Service Order is based on the false premise that it can refuse to pay LNW's specified charges, force LNW to continue providing service under previous terms and conditions that LNW has been prevented from amending, require LNW to spend the considerable resources necessary to defend Albemarle's multiple rate reasonableness challenges, and then at the conclusion of any such proceedings force LNW to collect from Albemarle any lawfully imposed charges through separate court proceedings. If the Board continues to sanction Albemarle's attempt to impose this perversion of the regulatory framework upon LNW, and essentially forces LNW to continue providing intra-plant switching service to Albemarle at a loss while Albemarle's rate reasonableness challenges wind their way through the Board and the federal court system (which could take several years at the current rate), LNW will face financial ruin. Moreover, there will be no disincentive for other rail shippers and receivers to use Albemarle's tactics and refuse to pay the charges or rates specified by other railroads until the Board rules on their rate reasonableness challenges. The impact of such a course of action by the Board would be extremely detrimental to the rail industry generally, and the greatest harm would be inflicted on small Class III rail carriers such

as LNW that do not have the financial resources to defend multiple challenges to their ability to set and amend their own rates and earn an acceptable return with sufficient economic and liability protection.

Albemarle points to no legal authority whatsoever for the perversion of the regulatory framework that it seeks to impose on LNW, and its silence on this point in its Rebuttal and Second Rebuttal speaks much louder than words. The deleterious impact described above that would be felt by LNW and the rail industry generally if the Board were to condone Albemarle's conduct here presumes that LNW is required to provide intra-plant switching and storage of hazardous materials for Albemarle. LNW does not believe that is the case. If the Board were to reject LNW's position here, then shippers and receivers of chemicals and other commodities would have the ability to force railroads to store cars of hazardous materials on railroad property and also would have the ability to force railroads to provide intra-plant switching of such hazardous materials upon the request of such shippers or receivers. The negative impact of such a decision on the entire rail industry would be enormous.

C. The Provision of Storage Has Everything To Do With This Proceeding

Once again, Albemarle misleads the Board when it claims that "the provision storage has nothing to do with this proceeding."[10] Albemarle can continue to do its own switching on the east side on the LNW main line, but in order to use storage tracks C, D and E on the west side of the LNW main line (which storage tracks are all located on LNW property and which storage track C is owned by LNW), Albemarle needs to have access to the LNW main line to switch cars between the storage tracks and its South Plant. Despite Albemarle's attempts, the intra-plant

[10] See Second Rebuttal at 6 (capitalized words from section heading converted into regular text for ease of reference).

switching and storage issues cannot be artificially divorced from consideration here to suit Albemarle's own interests. LNW does not want to allow Albemarle to store any cars on LNW tracks or property unless Albemarle pays LNW an acceptable rate and provides adequate indemnity protection to LNW in the event of a release of Albemarle's chemicals. LNW has tried to take steps to cease the storage arrangements on its property until the parties agree on mutually acceptable terms, but the federal court through its preliminary injunction and the Board by not acting have forced LNW to continue providing such storage to Albemarle on unacceptable terms. If Albemarle took commercially reasonable steps to make other arrangements to manage its car storage requirements and LNW was no longer required by the court's junction or the Board's inaction to provide such storage, there would be no need for Albemarle to seek access across the LNW main line for intra-plant switching service. Thus, Albemarle's claim here is integrally related to the storage issue.

Albemarle makes the interesting claim that "any matter relating to Albemarle's storage track entails an issue of property law that must be addressed by the appropriate court of competent jurisdiction (presumably the Federal District Court where the proceeding underlying Docket No. 42096 is being held in abeyance)." Second Rebuttal at 6-7. Ironically, the federal court in Arkansas has deferred all matters regarding switching, weighing and the cancellation of the storage track arrangements to the Board. See January 23, 2006 Preliminary Injunction attached hereto as Exhibit B. Albemarle's position here is emblematic of its entire approach to this dispute. Its goal, through the filing of multiple proceedings against LNW, is to lock LNW into an untenable position where both the Board and the federal court effectively force LNW to continue providing storage of hazardous materials on LNW property at ridiculously low

historical rates and without adequate indemnity protection. See Brooks V.S. at 2-3.[11]

The Board cannot allow this unacceptable arrangement to continue, particularly since LNW is under no common carrier obligation to provide storage space on its right of way for Albemarle. LNW has been informed by other Class I railroads that they no longer allow customers to store chlorine or other hazardous materials on their property because of the potentially catastrophic risks. See Brooks V.S. at 2. There is no reason LNW should be treated any differently from those Class I carriers. Albemarle has the financial resources to make other arrangements for storing its hazardous materials and it should be ordered to do so immediately even if that may be less convenient for Albemarle than forcing LNW to shoulder the economic and safety risks associated with such storage.

D. Albemarle Continues to Minimize The Significant Risks Borne By LNW

Albemarle once again fails in its feeble attempt to minimize LNW's concerns about storing and switching highly hazardous materials such as chlorine for Albemarle on LNW property. Albemarle falsely states (see Second Rebuttal at 8) that the storage in dispute takes place on Albemarle tracks located on Albemarle property. However, as set forth in the Brooks V.S., storage tracks A, B, C, D and E are located on LNW property within the LNW main line right of way and LNW (not Albemarle) owns storage tracks A, B and C. See Brooks V.S. at 2. Therefore, LNW's concerns about a release on or adjacent to LNW property are not overstated.

Albemarle also falsely accuses LNW of making a "fallacious representation" about the impact of the terrain in the vicinity of the LNW main line on the safety risks presented by LNW

[11] Albemarle makes the apparently facetious argument (see Second Rebuttal at 7-8) that LNW is not precluded from obtaining additional insurance to protect itself from the significant risks that it bears on Albemarle's behalf, knowing full well that LNW has been and continues to seek adequate indemnity and environmental liability protection from Albemarle for storing hazardous materials on LNW property.

intra-plant switching operations. This accusation reinforces Albemarle's ignorance about or utter disregard for railroad safety issues. The slight but undeniable grade that exists in the vicinity of the LNW main line can be extremely dangerous when handling a 100-ton railcar loaded with chlorine. Such a slight incline could produce runaway speeds of 70-80 mph if the railcar is not properly handled. See Brooks V.S. at 4. Albemarle's misunderstanding or blatant disregard of the risks faced by LNW also is revealed by its statement that intra-plant switching of such highly hazardous material should be less risky than linehaul movements. See Second Rebuttal at 8. Although an isolated intra-plant switch may involve less cars than a linehaul movement, the higher frequency and multiple handling involved in the historic level of intra-plant switching that LNW has provided for Albemarle imposes equal if not higher risks than linehaul service. See Brooks V.S. at 4. Thus, LNW needs the adequate indemnity and economic protection that it seeks from Albemarle for providing such service.

E. Multi-Party Switching Is Inherently Dangerous

LNW has repeatedly informed Albemarle that having more than one party switching hazardous materials on LNW's main line and adjacent track is extremely dangerous. See Brooks V.S. at 4. Thus, LNW remains strongly opposed to allowing Ouachita Railroad personnel to access the LNW main line. Albemarle has submitted no operational plan or other evidence to allay LNW's concerns about multiple-party switching or the unknown FRA qualifications of the specific Ouachita personnel that would be available to provide such services for Albemarle.

LNW's safety concerns in this regard are paramount. Thus, although LNW believes that Albemarle's emergency service order request is without merit, if the Board is at all disposed to give Ouachita Railroad access to the LNW main line, LNW will commit to continue providing intra-plant switching services to Albemarle. However, LNW believes that its provision of such

service on and after September 14, 2006 should be conditioned on an order from the Board that (i) Albemarle pre-pay the $400 per car charge (based on the 8 switches per day, 4 days per week minimum) requested by LNW as required by the statutory framework, and (ii) Albemarle allow LNW to provide all necessary intra-plant switching at the South Plant for the safety and economic reasons discussed herein.

Albemarle has conceded in its Second Rebuttal that the Board has no jurisdiction over the car storage issue, which is consistent with LNW's understanding. See Second Rebuttal at 6-7. Thus, this should mean that LNW has every right to stop storing Albemarle hazardous materials on storage tracks C, D and E (which are located on LNW property on the west side of the LNW main line) and by implication has every right to stop switching cars between those storage tracks and the South Plant. However, LNW will continue to switch cars between storage tracks C, D and E and the South Plant on and after September 14, 2006 if the Board is inclined to grant the alternative service request submitted by Albemarle but believes LNW's provision of such service should be conditioned on an order from the Board that Albemarle immediately make alternative arrangements for its car storage needs so that LNW may cancel all storage track arrangements on LNW property.[12]

## III. CONCLUSION

For the foregoing reasons, LNW respectfully requests that the Board deny the Petition for Emergency Service Order and related Petition for Immediate Relief that Albemarle filed on

[12] LNW does not believe that it is bound by the federal court's preliminary injunction to continue storing Albemarle's hazardous materials on its property, or to continue providing intra-plant switching at the South Plant, until the Board rules in this matter because (among other reasons) Albemarle itself violated the status quo condition of the preliminary injunction when it elected in January to perform its own intra-plant switching service. However, in order to avoid having an unqualified third party forced onto its property (and not because of the merits of Albemarle's claim), LNW will agree to continue switching and storage after September 13, 2006 based on the conditions requested herein by LNW.

August 18, 2006. This dispute is all about the applicable charges that Albemarle is required to pay for intra-plant switching service and has nothing to do with the adequacy of LNW's service, which has continued unabated despite the actions and statements made by both parties. In addition, the Board's emergency service order jurisdiction does not extend to the intra-plant switching and storage services in dispute. Thus, Albemarle is not entitled to the emergency relief that it seeks. The Board should deny the relief sought by Albemarle and confirm that it does not have jurisdiction over the intra-plant switching and car storage services provided by LNW.

Alternatively, if the Board orders LNW to continue to provide intra-plant switching and storage services for Albemarle on and after September 14, 2006, the Board should require Albemarle to pre-pay for switching at the $400 per car charge specified by LNW (based on the 8 switches a day, 4 days a week minimum), should require Albemarle to allow LNW to provide all necessary intra-plant switching at the South Plant due to the safety and cost concerns expressed herein, and should require Albemarle to make immediate alternative arrangements for its car storage needs so that LNW may cancel all storage track arrangements on LNW property.

Respectfully submitted,

By: _____

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

**EXHIBIT A**

# VERIFIED STATEMENT

# OF

# LARRY BROOKS

My name is Larry Brooks. I am the Vice-President and General Manager of The Louisiana and North West Railroad Company ("LNW").

One of LNW's customers is Albemarle Corporation ("Albemarle") at its South Plant facility in Magnolia, Arkansas. In recent years, LNW has moved approximately 1300 carloads per year in line-haul service to and from the South Plant. Virtually all of the carloads have contained highly hazardous chemicals, such as chlorine and bromine products.

In addition to line-haul service, LNW historically provided the South Plant with intraplant switching, weighing, and storage services. Albemarle's production process requires storage of various hazardous raw materials used in its operations. In addition, Albemarle often stores finished chemicals prior to shipment to its customers. Albemarle has not invested in sufficient track capacity on its own property or made necessary operational adjustments at the South Plant to handle the volume of inbound chemicals that it receives by rail and the volume of outbound chemicals that it ships by rail to avoid relying on LNW to store and switch loaded cars of hazardous materials for Albemarle on LNW property. Therefore, Albemarle uses LNW storage tracks, and also uses Albemarle storage tracks and a track scale located on LNW property, to store up to 100 loaded or empty railcars owned or leased by Albemarle.

Albemarle historically relied on LNW to provide intra-plant switching of cars between the Albemarle storage and weighing tracks (including storage tracks C, D and E located on LNW property on the west side of the LNW main line and storage tracks A and B located on LNW property on the east side of the LNW main line) and the Albemarle plant facility on the east side

of the LNW main line. In late 2005, LNW attempted to increase its tariff charges and otherwise amend the terms and conditions for such intra-plant switching, storage and weighing services. However, Albemarle objected and filed various legal proceedings against LNW in an attempt to block LNW from amending its service terms and conditions to incorporate acceptable economic and indemnity protection. Since late 2005, Albemarle has continued to pay LNW $121 per intra-plant switch and extremely modest annual rental on the five storage tracks located on LNW property (i.e., Tracks A, B and C, which are owned by LNW and located on LNW property, and Tracks D and E, which are owned by Albemarle but located on LNW property). In early 2006, Albemarle began providing its own intra-plant switching service on the east side of the LNW main line using a rail-car mover (not a locomotive or switch engine) that Albemarle leases to perform such service. This has resulted in a dramatic decrease in the amount of intra-plant switching provided by LNW.

Based on a recent survey performed for LNW, it has been determined conclusively that storage track D is entirely on LNW property and that half of storage track E (split roughly down the centerline) is on LNW property. A copy of the plats from that survey are appended hereto as Attachment 1. Albemarle stores an average of approximately 40 loaded tankcars of chlorine and other highly hazardous chemicals on those three storage tracks located on LNW property on the west side of the LNW main line (Tracks C, D and E) each and every day. Albemarle also stores hazardous materials on Tracks A and B, which are owned by LNW and located on LNW property on the east side of the LNW main line.

Based on recent discussions I have had with representatives of Class I and other railroads, it is my understanding that most railroads (including many if not all of the Class I railroads) either have adopted a policy of not allowing customers to store any chlorine or other hazardous

materials on their property or are moving towards the adoption of such a policy because of the potentially catastrophic risks associated with such storage. As a result of the current situation, LNW has been forced to continue providing storage of hazardous materials on LNW property at ridiculously low historical rates and without adequate indemnity protection.

LNW is losing money on the limited intra-plant switching operations that it performs when Albemarle conducts its own switching service. Due to the high cost of fuel and labor involved in such operations, and the extremely low rate of $121 per switch that Albemarle has continued to pay since November 2005 (based on an accounting of switches as determined unilaterally by Albemarle), LNW is not covering its costs of providing limited intra-plant switching for Albemarle. These costs do not account for the significant liability risks that LNW bears when it provides such switching services for Albemarle.

In August of 2006, one of my colleagues and I met with Danny Wood (Albemarle's Supply Chain Manager for the South Plant) and one of his colleagues in an attempt to reach an agreement on a prospective intra-plant switching charge that would be mutually acceptable to both parties. Prior to the start of such commercial negotiations, we did not agree to nor discuss whether the substance of those discussions would be confidential or excluded from admissibility in any proceeding.

As a result of agreements reached during those discussions on an acceptable intra-plant switching charge, on August 7th Albemarle returned 100% of the intra-plant switching business at its South Plant to LNW. I was informed around that same time by Mr. Wood that Albemarle would provide at least twenty (20) days notice to LNW before Albemarle resumed its own switching. Mr. Wood did not condition this notice commitment on any other occurrence. On August 16, 2006, however, following additional discussions between the parties, Albemarle's

Mr. Wood warned me that Albemarle would resume its own intra-plant switching activity on Monday, August 21, 2006 (despite its commitment to provide 20 days notice to LNW) if the parties did not reach a resolution on remaining storage/lease and linehaul rate disputes between the parties.

On August 17, Mr. Wood informed me that Albemarle was reneging on its decision to allow LNW to provide all of the intra-plant switching service at the South Plant. At that point, I informed Mr. Wood that LNW was more than willing and able to handle all of Albemarle's intra-plant switching needs at the South Plant but would only do so if LNW was allowed to provide all such switching. LNW's position with respect o switching is based on the safety and economic concerns discussed herein. On August 18, Mr. Wood informed me that Albemarle would resume its own switching operations on August 21, 2006. I then informed Mr. Wood that LNW would not provide any intra-plant switching unless Albemarle agreed to pre-pay $400 per car based on a minimum of 8 cars per day, 4 days per week. Albemarle's counsel filed the Petitions in this proceeding shortly thereafter.

LNW has continued to provide limited intra-plant switching service to Albemarle as requested by Albemarle although Albemarle has not agreed in writing to LNW's $400 per car charge. Albemarle has used its leased equipment and third party contractor to perform the bulk of its intra-plant switching at the South Plant. LNW performed 6 switches on Monday, August 28, 3 switches on Thursday, August 31, and 2 switches on Friday, September 1. This is a dramatic reduction from the historical level of intra-plant switching that LNW performed for Albemarle at the South Plant.

Albemarle has provided little information about the qualifications of its third-party contractor Ouachita Railroad ("Ouachita"). LNW has repeatedly informed Albemarle that

having more than one party switching hazardous materials in the vicinity of LNW's property adjacent to the South Plant is extremely dangerous. The slight but undeniable grade that exists in the vicinity of the LNW main line can be extremely dangerous when handling a 100-ton railcar loaded with chlorine. Such a slight incline could produce runaway speeds of 70-80 mph if the railcar is not properly handled. Although an isolated intra-plant switch may involve less cars than a linehaul movement, the higher frequency and multiple handling involved in the historic level of intra-plant switching that LNW has provided for Albemarle imposes equal if not higher risks than linehaul service. LNW management, LNW employees and the labor organizations that represent those employees have substantial concerns about allowing Ouachita Railroad personnel to operate over the LNW mainline while LNW continues to use that mainline and other tracks within and adjacent to the South Plant for linehaul service. Allowing an inexperienced third party to switch Albemarle's hazardous materials over the LNW main line could result in a disastrous situation, considering the highly hazardous nature of the chemicals that would need to be handled by the two railroads, and the unfamiliarity of the Ouachita Railroad personnel with the LNW main line track and terrain. As a result of these safety concerns, and given the fact that LNW is not covering its costs of providing the limited intra-plant switching requested by Albemarle, LNW has insisted on doing all or none of the intra-plant switching at the South Plant.

I hereby certify that, in addition to the foregoing, all other factual representations contained in LNW's August 21, 2006 submission, LNW's August 25, 2006 Reply and LNW's September 6, 2006 Response are accurate to the best of my knowledge, information and belief.

LANDPOINT SURVEYS, INC.
JAMES LATSON SOUTER, PLS

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BY LANDPOINT SURVEYS INC.

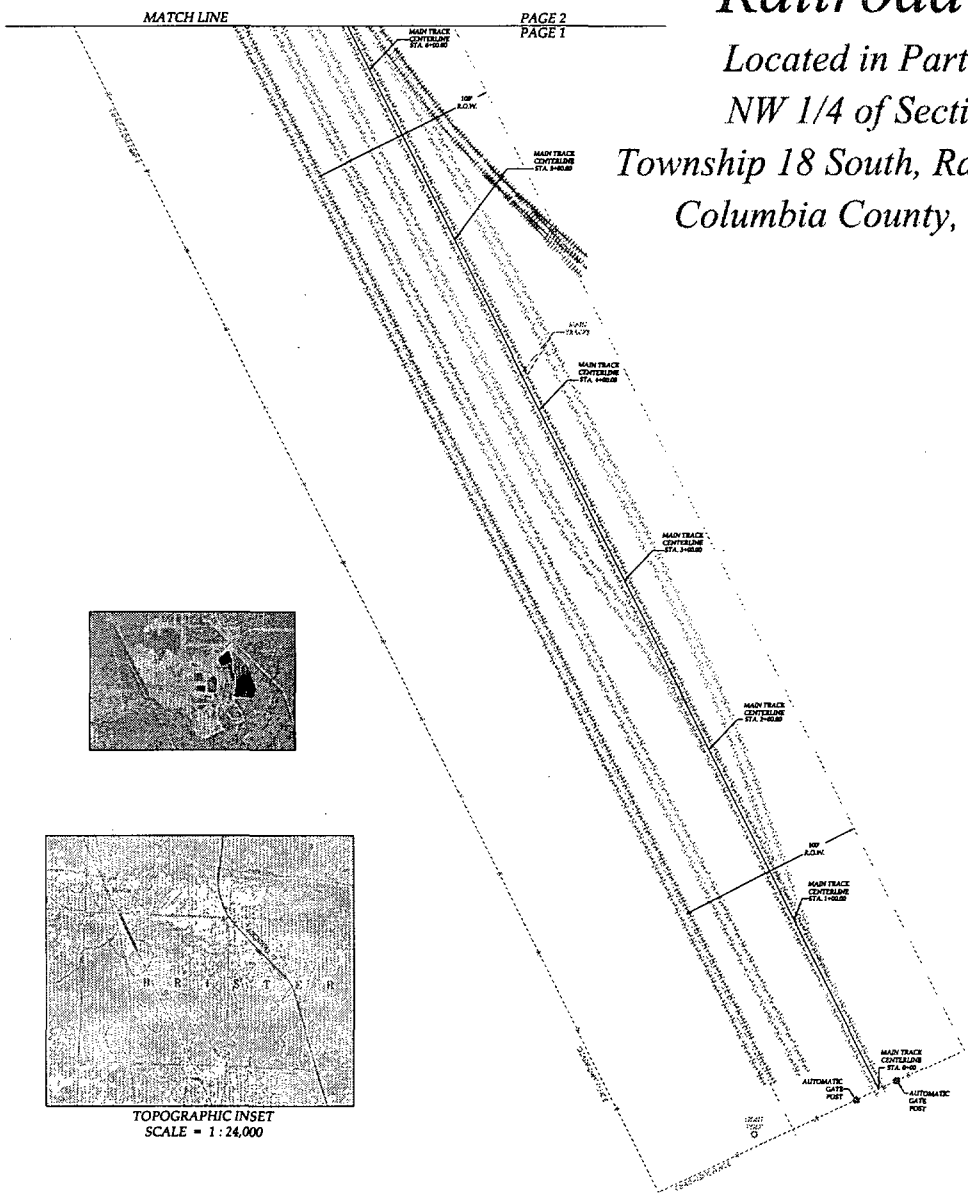
R-20-W

Attachment 1

NOTE: THIS SURVEY IS SUBJECT TO POSSIBLE VISIBLE AND NON- VISIBLE EASEMENTS.

# As-Built Survey for The L & N W Railroad Co.

*Located in Part of the NW 1/4 of Section 18, Township 18 South, Range 20 West, Columbia County, Arkansas*









TOPOGRAPHIC INSET
SCALE = 1 : 24,000

SCALE: 1" = 30'
DATE: 5/28/06
NUMBER: 06-410 Page 1 of 4
DRAWN: MANDY CAMP
COOD. GRIDREVS1106-06LZAC
FILE NAME:GPS DRIVES1 2006\PLATS\06-410.DWG

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LEGEND
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- EXISTING CORNERS FOUND (BETTER DESCRIBED ON PLAT)
- EXISTING SIGN POST
- EXISTING RAILROAD TRACKS
- EXISTING FENCE LINES
- EXISTING POWER POLES
- EXISTING ELECTRIC LINES
- BOUNDARY LINES PER THIS SURVEY

REGISTERED PROFESSIONAL LAND SURVEYOR

I HEREBY STATE THAT THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE 30TH DAY OF MAY 2006 AND THAT THE CORNERS HERE SET, OR RECOVERED AS SHOWN, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

JAMES LATSON SOUTER, PLS No. 1616
(NOTE: THIS PLAT SHOULD NOT BE CONSIDERED VALID WITHOUT DIRED SURVEYOR'S STAMP AND SIGNATURE. BEARINGS BASED ON GRID NORTH. NO PHOTOCOPIES. © COPYRIGHT 2006

SHEET 1 OF 4

LANDPOINT SURVEYS, INC
JAMES LITSON SOUTER, PLS
611 HIGHWAY 65 EAST
P.O. DRAWER 1050
MAGNOLIA, AR 71753
AR. PH. (870) 234-4284
(870) 236-7088 FAX
1519 LINE AVENUE
SUITE D8
SHREVEPORT, LA 71106
LA. PH. (318)226-0889

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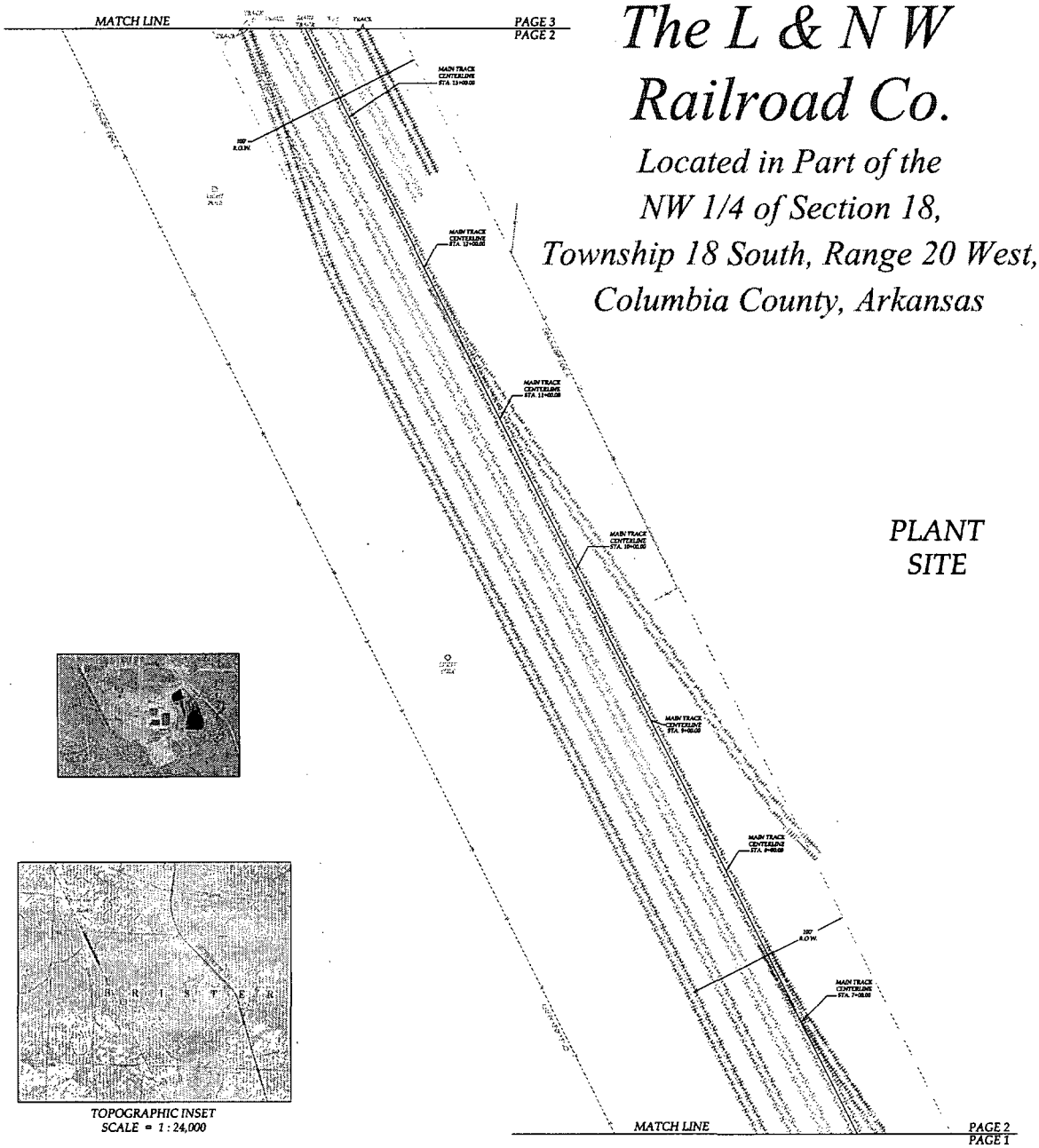
BY LANDPOINT SURVEYS INC.



NOTE: THIS SURVEY IS SUBJECT TO POSSIBLE VISIBLE AND NON-VISIBLE EASEMENTS.

# As-Built Survey for The L & N W Railroad Co.

*Located in Part of the NW 1/4 of Section 18, Township 18 South, Range 20 West, Columbia County, Arkansas*









TOPOGRAPHIC INSET
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NUMBER: 06-132 Page 1 of 4
DRAWN: MANDY CAMP
COORD: GPS(NAD83)06-132.TAK
FILE NAME:GPS DRIVE(E:)\2006\PLATS\06-132.DWG

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- EXISTING FENCE LINES
- EXISTING POWER POLES
- EXISTING ELECTRIC LINES
- BOUNDARY LINES PER THIS SURVEY

I HEREBY STATE THAT THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE 26TH DAY OF MAY 2006 AND THAT THE CORNERS WERE SET, OR RECOVERED AS SHOWN, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

JAMES LITSON SOUTER, PLS No. 1050
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REGISTERED PROFESSIONAL LAND SURVEYOR

SHEET 2 OF 4

LANDPOINT SURVEYS, INC.
JAMES LATHON SOUTER, PLS
621 HIGGINBOTHAM ST EAST
P.O. DRAWER 3858
MAGNOLIA, AR 71753
AR. PH. (870) 234-4286
(870) 234-7088 FAX
3218 LINE AVENUE
SUITE 124
SHREVEPORT, LA 71106
LA. PH. (318)220-0169

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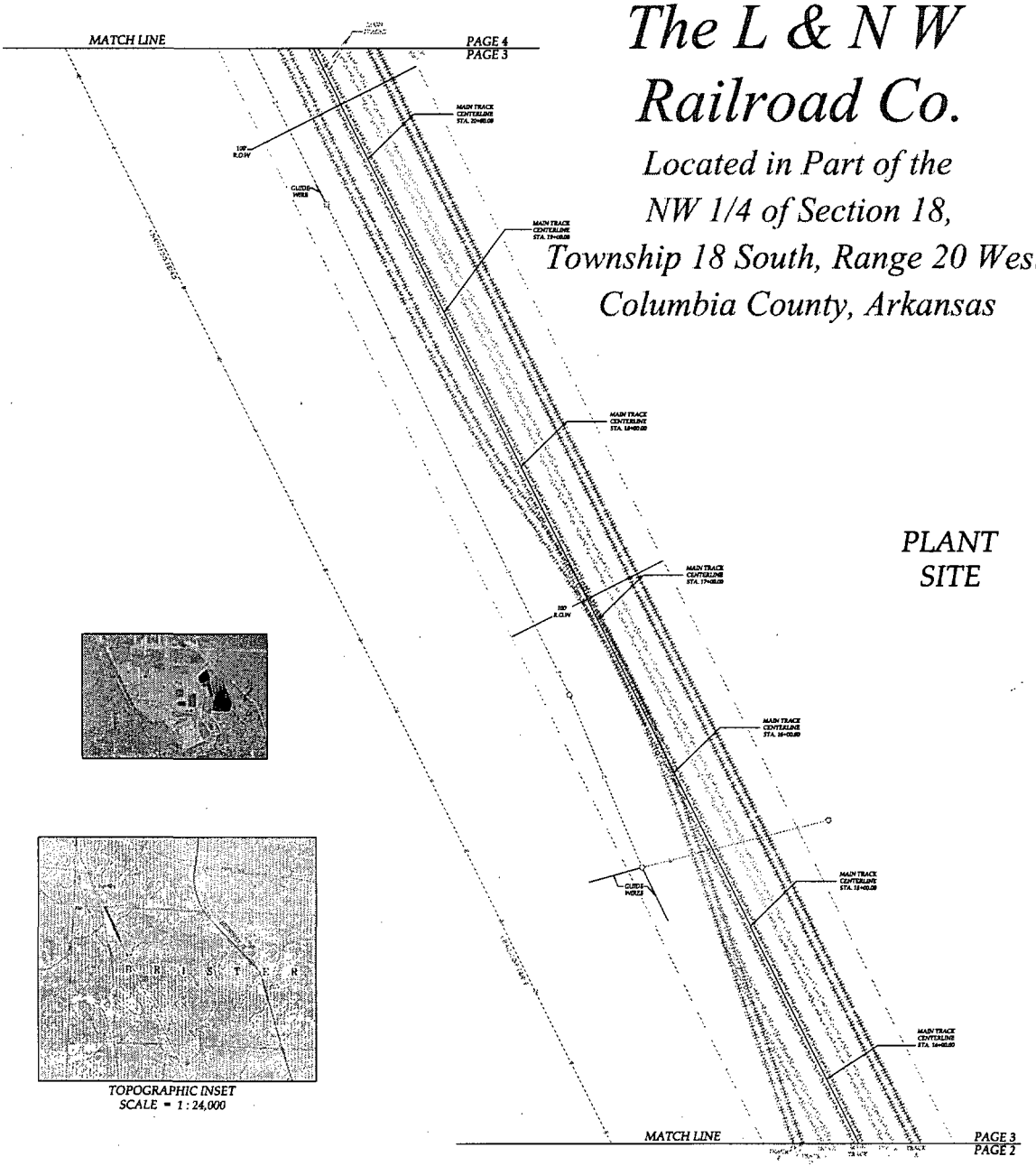
# As-Built Survey for The L & N W Railroad Co.

*Located in Part of the NW 1/4 of Section 18, Township 18 South, Range 20 West, Columbia County, Arkansas*









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SCALE: 1" = 30'
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NUMBER: 04-110 Page 3 of 4
DRAWN: MANDY CAMP
COGO: GPSDRIEVE3\04-110LZAK
FILE NAME: GPS DRIVE3\2004PLATS\04-110.DWG

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- EXISTING FENCE LINES
- EXISTING POWER POLES
- EXISTING ELECTRIC LINES
- BOUNDARY LINES PER THIS SURVEY

REGISTERED PROFESSIONAL LAND SURVEYOR

I HEREBY STATE THAT THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE 30TH DAY OF MAY 2004 AND THAT THE CORNERS WERE SET, OR RECOVERED AS SHOWN, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

JAMES LATHON SOUTER, PLS No. 1638

NOTE: THIS PLAT SHOULD NOT BE CONSIDERED VALID WITHOUT DATED SURVEYOR'S STAMP AND SIGNATURE. BEARINGS BASED ON GRID NORTH. NO PHOTOCOPIES. © COPYRIGHT 2005

LANDPOINT SURVEYS, INC.
JAMES LATSON SOUTER, PLS
103 HIGHWAY 82 EAST
P.O. DRAWER 1408
MAGNOLIA, AR 71753
AR. PH: (870) 234-4286
1520 LINE AVENUE
SUITE 204
SHREVEPORT, LA 71106
LA. PH: (318)224-0205
(870) 234-7088 FAX

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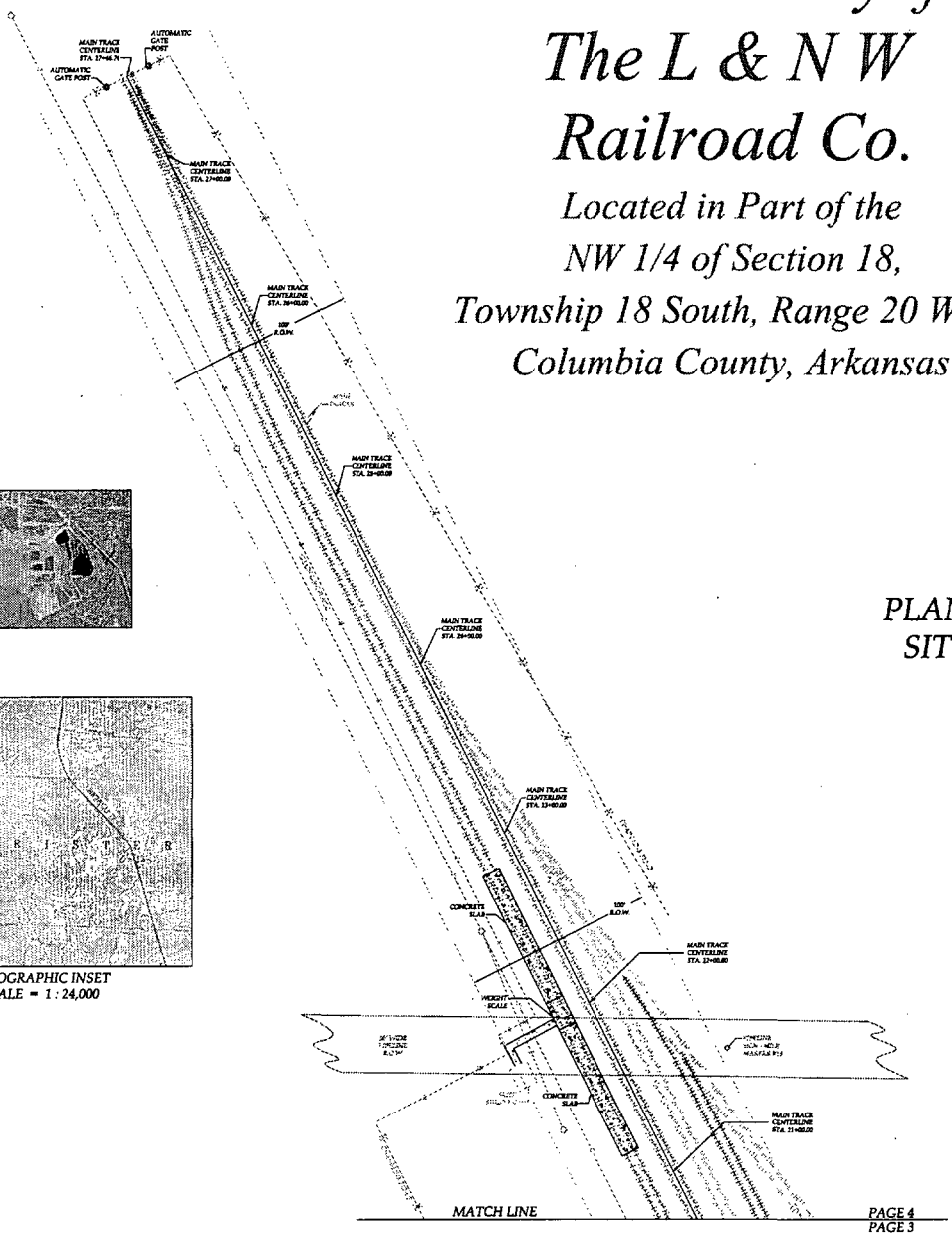
BY LANDPOINT SURVEYS INC.

NOTE: THIS SURVEY IS SUBJECT TO POSSIBLE VISIBLE AND NON-VISIBLE EASEMENTS.

# As-Built Survey for The L & N W Railroad Co.

*Located in Part of the NW 1/4 of Section 18, Township 18 South, Range 20 West, Columbia County, Arkansas*

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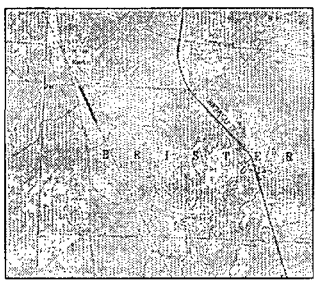


TOPOGRAPHIC INSET
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PLANT SITE

SCALE: 1" = 30'
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NUMBER: 06-438 Page 4 of 4
DRAWN: MANDY CAMP
COORD. GPS(DERIVED) (06-438.ZAK
FILE NAME:GPS DRIVE(1:)06\PLATS\06-438.DWG

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- EXISTING FENCE LINES
- EXISTING POWER POLES
- EXISTING ELECTRIC LINES
- BOUNDARY LINES PER THIS SURVEY

REGISTERED STATE OF ARKANSAS JAMES LATSON SOUTER PROFESSIONAL LAND SURVEYOR

I HEREBY STATE THAT THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE 26TH DAY OF MAY 2006 AND THAT THE CORNERS MEET SET, OR RECOVERED AS SHOWN, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

JAMES LATSON SOUTER, PLS No. 1030

NOTE: THIS PLAT SHOULD NOT BE CONSIDERED VALID WITHOUT EMBOSSED SURVEYOR'S STAMP AND SIGNATURE. BEARINGS BASED ON GRID NORTH. NO PHOTOCOPIES © COPYRIGHT 2006

SHEET 4 OF 4

**VERIFICATION**

STATE OF Louisiana )

) SS

Parish ~~COUNTY~~ OF Claiborne )

Larry Brooks, being duly sworn, deposes and says that he is Vice-President and General Manager of The Louisiana and North West Railroad Company, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief.

Larry Brooks

Subscribed and sworn to before by Larry Brooks this 6 day of September, 2006.

Notary Public

s/ Elizabeth Friar
Comm. is for life
#005070

My Commission Expires:
At death

Exhibit B



**IN THE UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF ARKANSAS**
**EL DORADO DIVISION**

**ALBEMARLE CORPORATION** **PLAINTIFF**

**VS.** **Case No. 06-CV-1002**

**LOUISIANA AND NORTHWEST RAILROAD COMPANY** **DEFENDANT**

**ORDER**

Three motions are before the Court: (1) LNW's Motion to Dissolve or Modify Temporary Restraining Order (Doc. 3); (2) Albemarle's Motion to Sever and Remand (Doc. 7); and (3) Albemarle's Motion to Transfer Case to the Surface Transportation Board (STB)(Doc. 9). A hearing was conducted relative to these motions on January 19, 2006. The Court finds these motions ripe for consideration. Upon consideration the Court finds the Motion to Dissolve or Modify Temporary Restraining Order (Doc. 3) should be and hereby is **granted in part and denied in part**; Albemarle's Motion to Sever and Remand (Doc. 7) should be and hereby is **denied**; and (3) Albemarle's Motion to Transfer Case to the Surface and Transportation Board (STB)(Doc. 9) should be and hereby is **granted**. Based on the arguments as presented by the parties in their briefs and motions and the record before the Court, the Court hereby makes the following orders:

**IT IS ORDERED** that the temporary restraining order entered by the Circuit Court of Columbia County, Arkansas, be modified to become a preliminary injunction, which will be separately entered in and consistent with the Court's Findings of Fact and

Conclusions of Law of even date;

**IT IS FURTHER ORDERED** that the issues of the reasonableness of LNW's rates and charges under the tariffs and of LNW's practices in applying these rates and charges are referred to the Surface Transportation Board (STB);

**IT IS FURTHER ORDERED** that the remainder of this lawsuit is hereby administratively stayed pending the STB's resolution of the referred dispute;

**IT IS FURTHER ORDERED** that the attorneys for LNW and Albemarle file with the Court a status report of the proceedings before the STB, such status report filing to commence within ninety (90) days from the date of entry of this order, and continuing for successive ninety-day intervals until further order of this Court.

**IT IS SO ORDERED** this 23rd day of January, 2006.

/s/ Harry F. Barnes
Hon. Harry F. Barnes
U.S. District Judge

Filed in Open Court this 21st day of Dec. 2005
JANICE LINKOUS
CIRCUIT CLERK

**IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS**
**_____ DIVISION**

ALBEMARLE CORPORATION PLAINTIFF

v. Case No.CIV-2005-261-6

THE LOUISIANA & NORTH WEST RAILROAD COMPANY DEFENDANT

**ORDER GRANTING TEMPORARY RESTRAINING ORDER**

COMES NOW before this Court, on this 21st day of December, 2005, Plaintiff Albemarle Corporation's Petition for Temporary Restraining Order in the above-styled matter, and considering the verified Petition and supporting affidavit provided by Plaintiff the Court hereby **FINDS, ORDERS, ADJUDGES, and DECLARES** as follows:

1. Plaintiff has made an adequate showing that immediate, *ex-parte*, relief is needed to prevent irreparable harm from resulting to Plaintiff and, from the Petition and exhibits, that Plaintiff is likely to succeed on the merits.

2. Plaintiff operates two production facilities in Columbia County, Arkansas. Its South Plant is located approximately seven miles south of Magnolia, Arkansas, and its West Plant is located approximately three miles west of Magnolia, Arkansas. Plaintiff's production process requires that brine and other materials be transported via underground pipelines from the South Plant to the West Plant and *vice versa*.

3. Defendant is the only railroad company that provides service to Plaintiff's South Plant facility.

4. Since 1969, Plaintiff, or its predecessors in interest, and Defendant have had various agreements and a sustained working relationship. These agreements have concerned (a) Plaintiff's placement and maintenance of pipelines running underneath Defendant's railroad

track in Columbia County, (b) Plaintiff's use and enjoyment of certain sidetracks for the purposes of the receipt of raw materials and storage of the same and finished products, and (c) Defendant's performance of switching and weighing services on the sidetracks and within track located on Plaintiff's plant property.

5. The pipelines operated between Plaintiff's South Plant and West Plant are critical to the safe, day-to-day operations of Plaintiff.

6. Plaintiff uses the sidetracks at issue in this matter for the storage of both raw materials and finished products that are received and shipped via rail car. Without the storage capacity available to Plaintiff through the cars stored on the sidetracks, Plaintiff will be forced to curtail its operations and transport materials, some of which are considered hazardous, over-the-road in tanker trucks. Plaintiff may not be able to secure the use of an adequate number of tanker trucks to continue its operations.

7. Once received on the sidetracks, the rail cars must be maneuvered in and amongst Plaintiff's South Plant to accommodate Plaintiff's production process. The Plaintiff and Defendant have developed a course of dealings whereby Defendant provided switching and weighing services to Plaintiff on Plaintiff's property. Plaintiff has paid Defendant for the performance of such switching and weighing services.

8. Plaintiff has made payment to Defendant for said uses and services pursuant to specific pipeline agreements, sidetrack agreements, and switching and weighing agreements.

9. In a letter dated November 23, 2005, Defendant stated that it intended to cease the existing relationship between Plaintiff and Defendant on or about December 23, 2005 unless Plaintiff agreed to make monthly payments to Defendant in the aggregate amount of $164,000.00.

10. This demand for payment represents a drastically higher amount than Plaintiff has had to pay for the same services and uses in the past. Plaintiff alleges that such demand for payment is coercive in nature and a breach of the implied duty and good faith and fair dealings that accompanies the agreements between the parties. Plaintiff alleges that Defendant has taken such action with knowledge that it is the only railroad company that provides service to Plaintiff's South Plant.

11. Defendant provides exclusive rail service to Plaintiff's South Plant, and, without continuing said services, Plaintiff's continued operations in Columbia County will be jeopardized. In addition, any interruption in Plaintiff's continued use of the pipelines may result in an unplanned stoppage in Plaintiff's production process, which could lead to a dangerous release of materials into the environment.

12. If Plaintiff's production ability does not continue until the legal dispute between the parties can be further decided and resolved, Plaintiff may be forced to curtail or otherwise stop production at its South Plant and possibly its West Plant. Together, these production facilities employ over 500 individuals.

13. Plaintiff has adequately demonstrated that if Defendant takes the threatened actions, Plaintiff's operations would be adversely impacted and could result in a production stoppage.

14. Based upon the verified allegations contained within Plaintiff's Petition and supporting Affidavit of Danny Wood, this Court concludes, that Plaintiff has demonstrated that any production stoppage will result in irreparable harm to Plaintiff that could not reasonably be compensated with money damages.

NOW THEREFORE, pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, Albemarle's Petition for Temporary Restraining Order is hereby granted, and this Court **ORDERS** as follows:

THAT, said Temporary Restraining Order shall require that the parties maintain the *status quo* as their business relationship existed on and prior to November 22, 2005; and

THAT, Defendant shall not remove or otherwise disrupt the location and operation of the various pipelines that Plaintiff owns and operates that run beneath the railroad track owned by Defendant, including, but not limited to, those pipelines described in the following agreements:

(a) Agreement dated January 11, 1969 concerning a four (4) inch natural gas pipeline crossing underneath Defendant's tracks in the Northeast Quarter (NE¼) of Section 1, Township 18 South, Range 21 West, Columbia County;

(b) Agreement dated January 11, 1969 concerning a ten (10) inch brine pipeline transporting tail brine, crossing underneath Defendant's tracks in the Northeast Quarter (NE¼) of Section 1, Township 18 South, Range 21 West, Columbia County, Arkansas;

(c) Agreement dated January 11, 1969 concerning a ten (10) inch brine pipeline transporting tail brine, crossing underneath Defendant's tracks in the Northeast Quarter (NE¼) of Section 19, Township 18 South, Range 20 West, Columbia County, Arkansas;

(d) Agreement dated March 17, 1969 concerning a six (6) inch natural gas pipeline installed at a point 1427 feet northwest of point of switch on spur to Albemarle's plant;

(e) Agreement dated October 20, 1969 concerning a ten (10) inch brine pipeline that crosses underneath Defendant's tracks in the Northeast Quarter (NE¼) of Section 1, Township 18 South, Range 21 West, Columbia County, Arkansas;

(f) Agreement dated March 1, 1990 concerning a six (6) inch pipeline located in the East ½ Northeast ¼, Section 1, Township 18 South, Range 21 West, Columbia County, Arkansas; and

(g) Letter Agreement dated August 30, 2001 concerning a three (3) inch gas pipeline and a fiber optic cable located in the East ½ Northeast ¼, Section 1, Township 18 South, Range 21 West, Columbia County, Arkansas; and

THAT, Defendant shall not remove or otherwise disrupt the location, condition or Plaintiff's ability to use and fully utilize the sidetracks that are the subject of one or more of the Sidetrack Agreements referenced in Plaintiff's Petition, including:

(a) Track Lease Agreement, dated October 26, 1976, concerning the side track known as the Kerlin Passing Track;

(b) Agreement for Industry Track, dated November 5, 1976, concerning a sidetrack in Section 18, Township 18 South, Range 20 West, Columbia County, Arkansas;

(c) Track Lease Agreement, dated November 1, 1984, concerning the sidetrack known as the Switch Track;

(d) Track Lease Agreement, dated November 1, 1984, concerning the sidetrack known as the Track "C";

(e) Track Lease Agreement, dated August 1, 1999, concerning two sidetracks known respectively as Track "A" and Track "B";

(f) Track Lease Agreement, dated August 1, 1999, concerning a sidetrack described as "A sidetrack at State Line, AR/LA beginning at Mile Post 25.00 and extending southward on the east side of, and parallel to, the Railroad Company's main track to Mile Post 25.18, a distance of approximately 950 track feet" with said sidetrack is located in Claiborne Parish, Louisiana; and

THAT, Defendant shall continue, without interruption or delay, to provide the same kind and quality of switching and weighing services on Plaintiff's property and within Plaintiff's facility that it has previously provided to Plaintiff in an amount and frequency equal to or within a commercially reasonable variation from the service provided to Plaintiff on and before November 22, 2005; and

THAT, Defendant shall take no action meant to result in or actually resulting in a frustration of Plaintiff's continued business operations; and

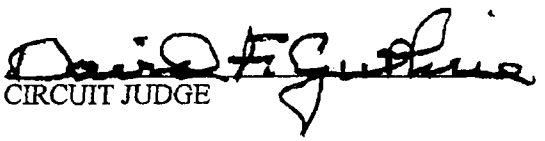
THAT, said Temporary Restraining Order shall be issued without the necessity of Plaintiff posting a bond; and

THAT, this Temporary Restraining Order shall be binding upon Defendant, The Louisiana & North West Railroad Company, as well as its officers, agents, servants, employees, owners, shareholders, attorneys and upon those persons in active concert or participation with any of the preceding entities or persons; and

THIS ORDER shall remain in place and its continuation shall be considered and further adjudged at a hearing set before this Court to be held at the request of The Louisiana & North West Railroad Company.

**IT IS SO ORDERED.**

Signed and entered this 21st day of December, 2005, at 3:45 o'clock P.m. to be effective immediately.



CIRCUIT JUDGE

Prepared by:

ALBEMARLE CORPORATION, Plaintiff

Ronny J. Bell (77010)
BELL LAW FIRM, P.A.
P. O. Box 841
Magnolia, AR 71754-0841
Telephone: (870) 234-6111
Telecopier: (870) 234-6699

and

Jim L. Julian
CHISENHALL, NESTRUD, & JULIAN P.A.
400 West Capitol, Suite 2840
Little Rock, AR 72201
Telephone: (501) 372-5800
Telecopier: (501) 372-4941

Attorneys for Albemarle Corporation

## CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2006 a copy of the foregoing Response was served by hand delivery and overnight mail (as indicated below) to:

Martin W. Bercovici, Esq. (via hand delivery)
Keller & Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Ouachita Railroad Company (via overnight mail)
730 S. Washington Avenue
El Dorado, AR 71730

Federal Railroad Administration (via hand delivery)
U.S. Department of Transportation
1120 Vermont Avenue, N.W.
Washington, D.C. 20590

Edward J. Fishman