

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42114

US MAGNESIUM, L.L.C.

v.

UNION PACIFIC RAILROAD COMPANY

Decided: November 3, 2009

By a complaint filed on May 8, 2009, US Magnesium, L.L.C. (USM) challenges the reasonableness of rates charged by Union Pacific Railroad Company (UP) for the movement of chlorine by tank car from: (1) Rowley, UT, to Eloy, AZ; and (2) Rowley to Sahuarita, AZ. USM seeks relief pursuant to the simplified procedures set forth in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) (Simplified Standards), aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir. 2009) (June 2009 Decision). In this instance, USM has elected to utilize the Three-Benchmark method, under which the total available rate relief is limited to \$1 million over a 5-year period.

On October 23, 2009, the United States Court of Appeals for the District of Columbia Circuit issued a decision reconsidering one aspect of its June 2009 Decision that affirmed the Board's decision in Simplified Standards. CSX Transp., Inc. v. STB, No. 07-1369 (D.C. Cir. Oct. 23, 2009). The court decided, inter alia, that the Board did not provide adequate notice that the comparison group in Three-Benchmark cases could be drawn from four-years' worth of Waybill data rather than the most recent year's data. Therefore, it vacated this aspect of Simplified Standards.

The record is now closed in this proceeding. The Board made available to the parties four-years' worth of Waybill data, and USM and UP have tendered their comparison groups based on that data. Under Simplified Standards, a prompt decision is called for within 90 days of the close of the record, here January 20, 2010. In light of the Court's October 23, 2009 decision, the Board asks the parties to confer and advise the Board by November 10, 2009, or earlier if possible, whether they agree to proceed based on the current record.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. USM and UP shall, by November 10, 2009, confer and advise the Board whether they agree to proceed based on the current record.

2. This decision is effective on the date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan  
Acting Secretary