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October 20, 2015

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 35964, *American Chemistry Council,
The Chlorine Institute, and The Fertilizer Institute -
Petition for Declaratory Order- Positive Train Control*

Dear Ms. Brown:

US Magnesium LLC (USM) hereby submits the following reply in support of the opening statement of the petitioners in this proceeding. USM is the major magnesium metal producer in North America and is located on the southwest shores of the Great Salt Lake, in Utah. The raw material for our production is the brine of the Lake and we use a unique chemical and electrochemical process to produce magnesium, chlorine and several additional chloride chemicals. Magnesium is present in the lake as magnesium chloride and the chlorine co-product is an essential and critical part of the process. For every pound of magnesium produced, we produce about one pound of chlorine that must be sold and one pound of other chlorides that are sold. Current production of magnesium is 65,000 tons per year, which means that 190,000 tons of chlorine and chlorides

are also produced which must be sold and transported to USM's customers.

All of the chlorine we produce and most of the other chlorides are shipped by rail. USM is a captive customer of the Union Pacific Railroad Company, which provides the only rail service via a spur that runs from the UP main line near I-80 in Utah to the plant. Chlorine is sold to various municipalities throughout the Nation for water treatment, to bleach producers and chemical producers who make materials such as PVC, and other applications, all of which are of critical importance to the safety and purity of our country's water supply and foods and to the overall United States economy. While UP has in the past attempted to restrict, or even eliminate its common carrier obligation to transport USM's chlorine, the Board has rightfully denied such attempts, and has clearly established that UP must transport chlorine for USM in response to a reasonable request for service pursuant to 49 U.S.C. 11101. STB Docket 35219, *Union Pacific Railroad Company – Petition for Declaratory Order*, (decision served June 11, 2009).

Positive train control is a congressionally mandated, gps controlled, safety system for the railroads that was required to be installed by the end of December 2015 on railroad systems carrying passengers and toxic inhalants (TIH) such as chlorine and ammonia that have certain tonnages of traffic. The UP and most of the other US Class I rail carriers have recently announced that they will not meet the statutory deadline for installing PTC on their respective systems. In addition, on September 9th, 2015, UP formally announced its intention to cease transporting chlorine and passenger rail traffic anywhere on its entire rail system beginning around Thanksgiving this year and continuing indefinitely! In addition to being extremely unfair and punitive to USM and other UP customers when it is UP who is at fault for missing the statutory deadline, USM agrees with the petitioners that this action would be in direct conflict with UP's common carrier obligation to transport our chlorine to our customers.

If allowed to occur, UP's embargo will critically damage the ability of USM to produce magnesium and chlorine. It will also reduce chlorine use in America and will negatively effect public safety and economics in the US. As to USM specifically, most chlorine in the US is produced by chloralkali companies. Those companies use a relatively low temperature

electrolytic process which can be shut down on a temporary basis and restarted quickly. The electrolytic cells used in this process are not damaged by the shutdown.

USM, on the other hand, uses a high temperature cell process (>1200 degrees F) in the final step to produce magnesium and chlorine. These cells cannot be shut down on a temporary basis as the degradation to the cells caused by humidity and exposure will destroy their integrity. Accordingly, after even a short shut down and cooling period, the cells must be rebuilt completely at great cost. Nor can we keep the plant running to produce magnesium, since our ability to store the chlorine co-product - which must be in rail tank cars - is extremely limited. Consequently, our inability to ship chlorine would shortly force us to shut down the entire plant, since we would rapidly run out of rail cars for storage. Shutting down the plant could destroy our production capability beyond our financial resources to continue. This could potentially destroy the jobs of over 500 workers at our Tooele County, Utah facility.

USM must therefore take any and all steps available to us to prevent our facility from being shut down by UP's planned embargo. That includes participating in this proceeding and urging the Board to issue a declaratory order that UP must transport our chlorine, even if UP has not installed PTC on all the track required by law. In addition, USM will be participating in the civil court action filed by the American Chemistry Council, The Chlorine Institute, and the Fertilizer Institute to attempt to enjoin the UP and other railroads from embargoing shipments on their system. It is critical for the STB to act promptly to confirm that the UP's failure to meet the statutory PTC deadline does not excuse it from fulfilling its common carrier obligation to continue to ship USM's chlorine to insure the safety and economic welfare of USM, our customers and the Nation for the future.

Howard Kaplan
USM Magnesium LLC
October 20th, 2015

Cc: Parties of Record