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March 24, 2009

**VIA E-FILING**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

224 745

**Re: STB Docket 35219, Petition of Union Pacific Railroad Company for a Declaratory Order**

Dear Ms. Quinlan:

On March 23, 2009, U.S. Magnesium LLC ("USM") filed its Comments in Opposition and Request for Order Compelling UP to Provide Common Carrier Rates in the above-captioned docket. Subsequently, USM discovered that footnote 9 on page 11 of the filing contains an erroneous quotation. The quotation should read: "US Magnesium has been awarded the Union Pacific Pinnacle annual safety award several times – the most recent being 2008 – for safe loading practices and zero non accident releases."

Enclosed please find corrected versions of page 11. Both the Public Version and the Highly Confidential Version are included. The Highly Confidential page has not been filed under seal because it does not include any protected information. Please insert these replacement pages in both versions of the previously filed document.

Please feel free to contact me with any questions.

Sincerely,



David E. Benz  
Counsel for US Magnesium, LLC

enclosure

cc: Tonya Conley (counsel for Union Pacific Railroad Company)

common carrier obligation to serve and permit railroads to dictate whether companies survive or perish in their particular markets.<sup>9</sup>

**C. The Board Should Direct UP to Provide USM with Rates and Service Terms for Transportation to the Four Destinations Covered by the Petition**

UP does not dispute that USM's January 18, 2009 request met all the requirements of §11101(b) and the Board's regulations, and the Petition asserts the grounds for UP's refusal to supply the requested rates and service terms in compliance with §11101(b) and 49 C.F.R Part 1300. USM has disputed those grounds in these Comments and Request. USM further notes that the *March 10 Decision* in this proceeding permits UP to provide the Board with "rebuttal and reply" filings on or before April 20, 2009.<sup>10</sup> USM submits that under these circumstances the Board will have sufficient evidence before it to not only rule on the Petition, but in the event the Petition is denied also order UP to immediately provide USM with rates and service terms from USM's Rowley facility to the four destinations at issue. The issuance of such an order is entirely appropriate in this declaratory order proceeding since the mere denial of the Petition without such an accompanying directive will require USM to file a separate complaint or petition seeking such an order should UP delay supplying the requested rates and service terms, or

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<sup>9</sup> Any request for service under the rates provided by UP to the four destinations at issue pursuant to §11101(b) would easily meet the "reasonable" standard of §11101(a). USM clearly has a business need for the transportation, and USM has a long history of transporting chlorine on the UP system without any spills or incidents, receiving multiple safety awards from UP. *Kaplan V.S. at 5* ("US Magnesium has been awarded the Union Pacific Pinnacle annual safety award several times – the most recent being 2008 – for safe loading practices and zero non accident releases."). The tank cars used for USM's transportation are supplied to UP by USM. Finally, UP has no basis for arguing that any request for service to Allemania, Dallas, Houston or Plaquemine would be unprofitable to UP, or would be unreasonable from an operational or equipment standpoint, and the Petition contains no such allegations.

<sup>10</sup> Despite filing a confidential version of its Petition UP chose to assert very few facts in support of its Petition and its refusal to provide rates in response to USM's request. UP should not be allowed in any rebuttal filing to assert facts and argument that should have been included in its Petition in anticipation of opposition from USM and other parties.

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