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THOMAS W. WILCOX
202.274.2913 telephone
tom.wilcox@troutmansanders.com

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
Attorneys at Law
401 9th Street, N.W., Suite 1000
Washington, D.C. 20004-2134
202.274.2950 telephone
202.274.2994 facsimile
troutmansanders.com

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VIA ELECTRONIC FILING

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

RE: STB Finance Docket No. 35219, *Petition of Union Pacific Railroad Company for a Declaratory Order*

Dear Secretary Quinlan:

On April 30, 2009, the Union Pacific Railroad Company ("UP") filed its Rebuttal and Reply-to Comments in the above referenced docket ("UP Rebuttal"). In this filing, UP has attempted to significantly narrow the intended scope of its Petition for a Declaratory Order ("Petition") to address the specific circumstances of its refusal to supply common carrier rates to US Magnesium LLC ("USM") for transportation of chlorine from USM's Rowley, Utah facility to the four destinations named in the Petition. The Petition speaks for itself and the Board can draw its own conclusions as to its intended scope and purpose based on it and the record in this proceeding. However, the UP Rebuttal contains several significant misstatements of fact that USM feels compelled to address. USM accordingly requests that the Board accept this brief letter into the record of this proceeding in reply to UP's Rebuttal.

Specifically, in its reply to UP's Petition, USM clearly stated that:

... [T]he sale of chlorine for further beneficial use enables USM to compete in a global market and survive as the only producer of magnesium in the United States. Without the sales of chlorine produced by its operations it is possible that the Rowley facility would close.¹

USM also clearly stated that it must have the ability to ship chlorine to the four Gulf Coast destinations for which UP has refused to provide rates due to the unpredictability of the market for magnesium, which in turn can make USM's chlorine production highly variable in a

¹ USM Comments in Opposition and Request for Order Compelling UP to Provide Common Carrier Rates at 4; Verified Statement of Dr. Howard Kaplan at 6.

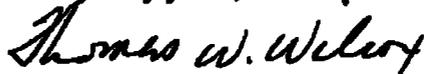
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given year. Such variability requires USM to have the ability to ship chlorine to the Gulf Coast where the demand for chlorine is the greatest and customers located there are capable of absorbing unexpected volumes. This enables USM's magnesium production to ramp up to meet demand.²

Despite these plain statements (and others) concerning the importance of shipping chlorine to USM's economic survival and the harm granting UP's Petition would inflict on USM both in the short term and over the long term, the UP Rebuttal asserts that USM's filing "essentially confirmed that UP's decision would not have a meaningful impact on USM" UP Rebuttal at 8. This statement is utterly unsupported by anything in USM's Reply filing. Similarly, the UP Rebuttal seriously mischaracterizes USM's filing by dismissing the chlorine co-produced by USM's operations as a mere "unwanted byproduct of its primary activities," and then strongly implying that USM has several economically and operationally feasible options for eliminating this supposed unwanted byproduct of its magnesium operations instead of marketing it to end users. *Id.* at 9. Neither assertion is remotely supported by USM's reply to UP's Petition.

Very truly yours,



Thomas W. Wilcox
Counsel for US Magnesium LLC

cc: Counsel for Union Pacific Railroad Company
Dr. Howard Kaplan

² Kaplan V.S. at 6.