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PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD



US MAGNESIUM, L.L.C.
238 North 2200 West
Salt Lake City, UT 84116-2921

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street
Omaha, NE 68179

Defendant.

Docket No. NOR 42 115

ENTERED
Office of Proceedings

JUN 25 2009

Part of
Public Record

COMPLAINT

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Docket No. NOR 42115

COMPLAINT

COMES NOW Complainant, U.S. Magnesium, L.L.C. ("USM"), and files this Complaint with the Surface Transportation Board ("Board" or "STB") against Defendant, Union Pacific Railroad Company ("UP"), pursuant to 49 U.S.C. §§ 10701, 10702, 10704, 10707, and 11704, and 49 C.F.R. Part 1111 seeking the establishment of reasonable railroad rates for the transportation of chlorine from Rowley, Utah, to Los Angeles, CA, Mojave, CA, Ontario, CA, Santa Fe Springs, CA, Saugus, CA, Torrance, CA, and Henderson, NV. As explained in more detail below, the common carrier transportation rates originally established in UP Tariff 4949, Item 1000, and most recently re-published in Item 1000-C (attached as Exhibit A) for the issue movements should be evaluated by the Board using the rate standards authorized by 49 U.S.C. § 10701(d)(3) and adopted by the Board in Ex Parte 646 (Sub-No. 1) *Simplified Standards for Rail Rate Cases*, (served Sept. 5, 2007) ("*Simplified Standards*"). USM further requests that the

Board evaluate the rates established for the issue movements under the Simplified Stand-Alone Cost ("SSAC") methodology described in *Simplified Standards*.

In support hereof, USM states as follows:

IDENTITY OF THE PARTIES

1. USM is a corporation organized under the laws of the State of Delaware with its principal place of business in Salt Lake City, Utah. USM specializes in the manufacture and supply of magnesium ingot products, magnesium recycling services, chemical by-products, and energy. USM is the only producer of primary magnesium in the United States, operating a manufacturing facility at Rowley, Utah on the Great Salt Lake, where magnesium has been produced by USM and its predecessors since 1972. USM's operations in Rowley began with the 2002 purchase by USM of the assets of Magcorp and the ongoing magnesium business that Magcorp had established there.

2. USM's magnesium production facility also produces a variety of co-products, which include chlorine, calcium chloride, iron chlorides, and hydrochloric acid. The co-product that is the subject of this Complaint is chlorine, which UP transports in rail tank cars supplied by USM. Chlorine is crucial to the health of millions of Americans due to its widespread use in water purification. In addition, chlorine is vital to the U.S. economy because it is used as a building block for many essential and diverse products used throughout the economy from plastics to pharmaceuticals. Chlorine is an essential and vital part of modern life. Chlorine appears in products involving an estimated 40% of the nation's economy.¹

3. UP is the nation's largest railroad, and is a common carrier engaged in the common carriage of freight in interstate commerce under the jurisdiction of the Surface Transportation Board. UP is subject to the Interstate Commerce Commission Termination Act,

¹ See website of the Chlorine Institute at <http://www.chlorineinstitute.org>.

49 U.S.C. § 10101 *et seq.*, and to the jurisdiction of this Board. UP provides the only feasible means of transporting chlorine from USM's Rowley facility to USM's customers, and exerts sole control over the transportation rates charged to USM for this transportation.

DESCRIPTION OF THE ISSUE MOVEMENTS

4. The movements that are the subject of this complaint are from Rowley, UT to the following destinations:

- a. Los Angeles, CA
- b. Mojave, CA
- c. Ontario, CA
- d. Santa Fe Springs, CA
- e. Saugus, CA
- f. Torrance, CA
- g. Henderson, NV

Transportation to these destinations occurs on lines of railroad owned and/or operated by the UP and it is transported from origin to destination via single-line service.

5. As required by 49 CFR § 1111.1(a), USM provides the following information regarding the issue movements:

- a. Information for all movements:

Carrier identifier	Union Pacific Railroad Company ("UP")
Type of shipment	UP single-line
Type of car (URCS code)	Tank (URCS code 15)
Car ownership	Private
Commodity type	Chlorine, STCC 2812815
Weight of the shipment per car	90 tons
Type of movement	Single-car load

b. Information specific to each issue movement:

	One-way distance	Number of cars in 2008	Number of cars expected in 2009
Los Angeles	798.2 miles	[]	[]
Mojave	732.9 miles	[]	[]
Ontario	758.3 miles	[]	[]
Santa Fe Springs	790.3 miles	[]	[]
Saugus	798.8 miles	[]	[]
Torrance	812.1 miles	[]	[]
Henderson	495.0 miles	[]	[]

HISTORY OF THE CHALLENGED RATES

6. Prior to March 3, 2009 chlorine shipments from the Rowley facility to the seven destinations at issue in this case were transported by UP pursuant to a rail transportation contract that was originally set to expire at the end of 2008 but was extended by mutual agreement of the parties to March 3, 2009 during the discussions summarized in the following paragraphs 7 and 8.

7. Beginning in early October, 2008 USM sought to engage UP in discussions to enter into a new rail transportation contract to replace the expiring contract. After initially not responding to USM's overtures, UP finally responded in January, 2009 by proposing to significantly increase the expiring contract rates to levels that were unacceptable to USM. UP refused all requests by USM to lower its proposed contract rate levels to these seven destinations. Without acceptable contract rates and service terms USM was forced to request common carrier tariff rates and service terms for rail service to the seven destinations at issue in this case which USM did by a request dated January 16, 2009 made pursuant to 49 C.F.R. Part 1300.²

² The January 16, 2009 request for common carrier rates and service terms also included rates to numerous other destinations, and UP provided rates to most of those destinations in its January 26, 2009 response and UP Tariff 4949, Item 1000. In UP Tariff 4949, Item 1000-A, UP also provided common carrier rates to several other destinations that had been requested by USM on January 16, 2009. On June 11, 2009, the Board directed UP to provide USM with common carrier rates for transportation to four additional destinations covered by the January 16 request.

8. UP established the requested tariff rates and service terms for shipments of chlorine to these seven destinations on January 26, 2009 in UP Tariff 4949, Item 1000. The rates went into effect on February 15, 2009, and USM began shipping under them on March 3, 2009. Subsequently, UP re-published these rates without change several times, the most recent being June 19, 2009, in UP Tariff 4949, Item 1000-C. *See* Exhibit A attached to this Complaint.

9. The rates in UP Tariff 4949, Item 1000-C for the transportation of USM's chlorine from Rowley to the seven issue destinations are dramatically higher than the contract rates previously paid by USM in 2008 for this transportation, and are unreasonably high in violation of 49 U.S.C. §§10701 and 10702.

UP'S MARKET DOMINANCE OVER THE TRANSPORTATION COVERED BY THE CHALLENGED RATES

10. There is no feasible transportation alternative to UP rail service for the transportation of chlorine from Rowley to the seven destinations covered by this Complaint. In accordance with 49 C.F.R. § 1111.1(a)(10), USM provides the following narrative describing the lack of feasible transportation alternatives:

11. There is no effective intramodal competition for rail transportation from the Rowley facility to the seven destinations in this Complaint because UP is the only railroad with physical access to the Rowley facility, and it is also the only railroad with physical access to six of the seven destinations. More specifically, the Rowley facility is located on the western shore of the Great Salt Lake at the end of a 14-mile line of rail owned by the UP, which connects to the UP main line running east to west through Salt Lake City into Nevada and on to Northern California. The closest connection to another railroad is to track owned by the BNSF Railway

See, STB Docket No. 35219, *Union Pacific Railroad Company – Petition for Declaratory Order* (decision served June 11, 2009). USM reserves all rights and remedies concerning other common carrier rates provided by UP that are not included in this Complaint.

Company ("BNSF") located in Salt Lake City, approximately 60 miles away. BNSF has trackage rights over the UP east-west main line as a result of the Board's decisions in the UP/Southern Pacific Lines merger proceeding,³ but these rights do not include the right to serve the Rowley facility, which was not classified as a "2 to 1" facility under those decisions due to its captivity to UP prior to the merger.⁴ But even if BNSF's trackage rights over the UP main line permitted BNSF to serve the Rowley facility from the UP main line (or even if the rights extended all the way to the plant), this would not result in effective competition with UP for transportation to the seven destinations for two critical reasons. First, unlike UP, BNSF has no direct routes running south from the Salt Lake City area to southern California and southern Nevada, which creates a significant competitive disadvantage for BNSF. Second, as stated above, UP is the only railroad with physical access to six of the seven destinations covered by this Complaint. As for the seventh, USM understands that BNSF has access to USM's customer in Los Angeles, to whom USM could potentially ship chlorine under a joint line UP-BNSF movement via interchange at Colton, CA. However, in Tariff 4949 UP has established the same rate to Colton as the single line UP rate all the way to the final destination in Los Angeles, thus rendering any joint movement with BNSF uneconomic for USM and its customer. See Exhibit A. In the past, USM has never shipped chlorine to this customer using any railroad other than UP in single line service. There are thus no railroad alternatives that effectively constrain UP's pricing power over the transportation of chlorine from the Rowley, Utah facility to the seven destinations in this Complaint.

³ *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company*, Docket 32760, 1 STB 233, 562 (1996) ("UP-SP Merger").

⁴ *UP-SP Merger* at 562 (1996).

12. There is also no effective intermodal competition for the issue traffic. Intermodal competition with rail transportation from trucks does not exist for chlorine due to chlorine's status as a toxic by inhalation ("TIH") chemical, a reality prior litigants before this Board have readily conceded and this Board has rightfully acknowledged.⁵ Because rail is the safest mode for transporting chlorine, USM and its predecessors in interest have never shipped chlorine produced at the Rowley facility on their account using truck transportation, let alone shipped any chlorine to any of the seven destinations covered by this Complaint by truck.⁶ USM neither owns nor leases any trucks equipped to transport chlorine, and USM's infrastructure at Rowley is designed to facilitate the loading and movement of rail tank cars of chlorine produced by the plant. In addition to entailing unacceptable additional risk, switching from rail to truck transportation would entail significant capital expenditures, and would cause USM to forego the benefits of the substantial investment it and its predecessors in interest have made in a rail-oriented plant infrastructure and in USM's fleet of specialized chlorine rail tank cars. Lastly, numerous federal regulations affect the transportation of TIH commodities, and USM would have to reassess its operations to ensure compliance if USM were to consider using trucks as an alternative mode of transportation.

13. There is no waterway that could be used for barge transportation between Rowley and any of the nine destinations. Similarly, there is no chlorine pipeline that could be used as a substitute for rail transportation.

⁵ STB docket No. 42100, *E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.* (decision served June 30, 2008), slip op. at 3.

⁶ On rare occasions of particular need, one USM customer located in the Salt Lake City, Utah area has dispatched one of its trucks to Rowley to pick up chlorine, but USM discourages this practice for safety and logistics reasons.

14. Because there is no effective intramodal or intermodal competition for the issue traffic, UP has qualitative market dominance over the transportation of chlorine from Rowley, UT, to Los Angeles, CA, Mojave, CA, Ontario, CA, Santa Fe Springs, CA, Saugus, CA, Torrance, CA, and Henderson, NV. 49 U.S.C. § 10707.

ESTIMATED URCS PHASE III VARIABLE COSTS

15. The common carrier transportation rates established by UP in Tariff 4949 for transportation of chlorine from Rowley, UT to the seven destinations covered by this Complaint produce revenues substantially in excess of 180% of UP’s variable costs of providing the transportation to each of the destinations. Therefore, UP has quantitative market dominance over this rail transportation, as described in 49 U.S.C. § 10707(d).

16. Pursuant to *Simplified Standards*, slip op. at 25, and using the URCS inputs listed above in paragraphs 4 and 5, the following chart summarizes USM’s preliminary estimates of the URCS phase III variable costs and revenue-to-variable cost ratio for each movement that is covered by this Complaint:

	URCS phase III variable costs⁷	Tariff rate from UP 4949 (per car)	R/VC ratio
Los Angeles	\$1815	\$8924	492%
Mojave	\$1709	\$9388	549%
Ontario	\$1750	\$9394	537%
Santa Fe Springs	\$1802	\$9073	504%
Saugus	\$1816	\$9531	525%
Torrance	\$1837	\$9336	508%
Henderson	\$1323	\$6423	486%

17. Because UP possesses both qualitative and quantitative market dominance over the transportation of chlorine from Rowley, UT to the seven destinations covered by this

⁷ Variable costs include “make whole” adjustment and are indexed to 2009 Q1 levels.

Complaint, the Board has jurisdiction over the reasonableness of the common carrier rates, rules and practices established by UP for this transportation. 49 U.S.C. § 10701(d)(1).

REQUESTED RELIEF

18. The common carrier transportation rates established by UP in Tariff 4949 for the rail transportation of chlorine from Rowley, UT to the seven destinations covered by this Complaint are all unreasonable, unlawful, and exceed the maximum reasonable level permitted by 49 U.S.C. §§ 10701, 10704, and the *Simplified Standards*.

19. This Complaint encompasses any changes or successors to UP Tariff 4949, and all future iterations, issuances, or forms of common carrier tariffs, price documents, rates, charges, rules, and service terms applicable to the transportation by UP of chlorine from Rowley, UT to the nine destinations listed herein.

20. The Board should order UP to establish reasonable rates and service terms for transportation of chlorine from Rowley, UT to Los Angeles, CA, Mojave, CA, Ontario, CA, Santa Fe Springs, CA, Saugus, CA, Torrance, CA, and Henderson, NV. 49 U.S.C. § 10704. The Board should also order that reparations be paid, plus interest, for any unlawful charges assessed by UP from and after March 3, 2009. 49 U.S.C. § 11704.

CONCLUSION

21. Neither this proceeding nor the granting of the relief requested will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

22. In accordance with 49 CFR §1111.1(b), USM is today making mandatory disclosures to UP.

WHEREFORE, Complainant USM prays that Defendant Union Pacific Railroad Company be required to answer the charges herein; that this Complaint be assigned for hearing under 49 CFR Part 1111; and that, after due hearing and investigation, this Board:

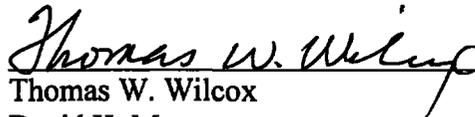
(1) after applying the Simplified Stand-Alone Cost approach of the *Simplified Standards*, find that the common carrier railroad rates UP has established for the transportation by rail of chlorine from Rowley, UT to Los Angeles, CA, Mojave, CA, Ontario, CA, Santa Fe Springs, CA, Saugus, CA, Torrance, CA, and Henderson, NV are unreasonable in violation of 49 U.S.C. §§ 10701(d)(1) and 10702;

(2) issue an order pursuant to 49 U.S.C. §10704(a)(1) which prescribes just and reasonable rates and related rules and service terms applicable to UP's rail transportation of USM chlorine from Rowley, UT to the seven destinations listed herein based on the evidence to be submitted in this proceeding;

(3) award USM reparations, plus any applicable interest, as calculated based on the record in this proceeding, in accordance with 49 U.S.C. §11704 for the unlawful charges assessed by UP from and after March 3, 2009; and

(4) grant to USM such other and further relief as the Board may deem proper under the circumstances.

Respectfully submitted,



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Attorneys for Complainant US Magnesium L.L.C.

Dated: June 25, 2009

EXHIBIT A



UP 4949

Item: 1000-C
CHLORINE

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UP 4949-1000-C

STCC/GROUP	STCC	DESCRIPTION
2812815		Chlorine Gas, Liquefied

Prices are subject to Fuel surcharges.

GENERAL APPLICATION RULES FOR ITEM 1000-C

1. Price applies in United States funds.
2. Applies in AAR Car Type T, tank cars.
3. Mileage allowance payment on private equipment will not apply.
4. Price is subject to Tariff UP 6007 (series), item 695 (series).
5. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.
6. Does not apply in equipment owned, controlled or leased by TTX.

APPLICATION AND RATES

COLUMN RATE APPLICATION RULES

1. Rates are in U.S. dollars Per Car.

STCC	Rate	Route Code/Gr
2812815 Chlorine Gas, Liquefied		
From: UT, ROWLEY		
To: AZ, ELOY	13396.00	UP
AZ, PHOENIX	11625.00	UP
AZ, SAHUARITA	10410.00	UP
CA, COLTON	8924.00	UP
CA, ELK GROVE	7341.00	UP
CA, LOS ANGELES	8924.00	UP
CA, MOJAVE	9388.00	UP
CA, ONTARIO	9394.00	UP
CA, PITTSBURG	10504.00	UP
CA, SACRAMENTO	7341.00	UP
CA, SAN JOSE	8855.00	UP
CA, SANTA FE SPRINGS	9073.00	UP
CA, SAUGUS	9531.00	UP
CA, STOCKTON	7679.00	UP
CA, SYLMAR	9459.00	UP
CA, TORRANCE	9336.00	UP
CO, DENVER	6530.00	UP
IA, CAMANCHE	10743.00	UP
IA, CEDAR RAPIDS	12328.00	UP
ID, LEWISTON	7675.00	UP

	Rate	Rate Code/Group
IL, DUPO	9653 00	UP
IN, EAST CHICAGO	10565.00	UP
MO, FESTUS	10333 00	UP
MO, KANSAS CITY	9432 00	UP
MO, ST LOUIS	11083 00	UP
NE, OMAHA	9428.00	UP
NV, HENDERSON	6423.00	UP
NV, SPARKS	6034.00	UP
OK, NOWATA	12027 00	UP
TN, MEMPHIS	11542 00	UP
TX, HOUSTON	A 15629 00	UP
UT, LITTLE MOUNTAIN	2638.00	UP
UT, SALT LAKE CITY	2579 00	UP

Issued: June 19, 2009
Effective: June 19, 2009

UP 4949

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Item: 1000-C
Concluded on this page

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June 2009, I served a copy of the foregoing Complaint by express overnight mail, upon the chief legal officer for Defendant at the following address:

General Counsel
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179


Thomas W. Wilcox