

over land. Therefore, any action taken by this Board that broadly affects the rates for transportation of TIH by rail affects the interest of TFI, ACC and CI members.

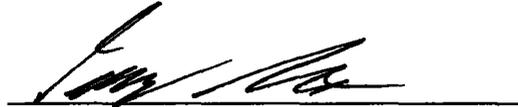
Complainant, US Magnesium LLC (“USM”), has challenged the reasonableness of rates established by UP for the transportation of chlorine, which is a TIH. USM has elected to bring its challenge pursuant to the Three-Benchmark procedures adopted in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards for Rail Rate Cases (served Sept. 5, 2007) (“Simplified Standards”). In accordance with the procedures adopted in Simplified Standards, UP and USM submitted Opening Evidence on August 24, 2009 regarding the comparable traffic group that should be used to determine the presumed maximum reasonable rate. UP also submitted evidence pertaining to positive train control (“PTC”) as an “other relevant factor” that UP contends warrants an upward adjustment to the presumed maximum rate. Specifically, UP attempts to increase the maximum reasonable rates for USM’s chlorine shipments by adding estimated costs to comply with a Congressional mandate that all Class I railroads install PTC, by December 31, 2015, on mainlines that carry TIH commodities and/or passenger traffic. It is this PTC evidence that TFI, ACC, and CI desire to address.

If the Board were to adopt UP’s position, it would have broad rate ramifications for *all* TIH traffic, not just the USM traffic at issue in this case. It would establish precedent for justifying skyrocketing rail rates that already have been set at levels designed to discourage TIH traffic. It would determine the reasonableness of rail rates based upon estimates of the expenses that a railroad *expects to incur*, rather than *real costs that it has incurred*. It would allow railroads to recover those estimated costs in the rates of current traffic, even though that traffic may never benefit from that investment. It threatens to unduly complicate Three-Benchmark proceedings with evidence as to whether PTC benefits more than just the TIH shipper and

whether and to what extent there are cost savings from PTC that should off-set PTC's costs. Therefore, TFI, ACC and CI, on behalf of their members, have a very strong and direct interest in this issue.

For the foregoing reasons, TFI, ACC and CI request leave to participate in this proceeding as *amici curiae* in order to submit the attached Joint Reply in response to UP's evidence of PTC costs as an "other relevant factor."

Respectfully submitted,



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• September 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have on this 22nd day of September, 2009, served a copy of the foregoing Joint Motion of The Fertilizer Institute, American Chemistry Council, and The Chlorine Institute For Leave to File a Joint Reply, As Amici Curiae, To The Opening Evidence of Union Pacific Railroad Company on the following by hand to:

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