



US Magnesium LLC

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My name is Howard Kaplan and I am Vice President-Chemicals&By-Products for US Magnesium LLC. US Magnesium wants to address the issues surrounding the legal obligation of the railroads to provide rail service with respect to the transportation of chlorine. Without the rail transportation of chlorine, US Magnesium would quite possibly go out of business, and the vital chlorine it supplies to Thatcher Company and Kemira Water Solutions, Inc., Western United States Bleach producers and municipalities for water treatment would not be available. We have attached letters from Thatcher and Kemira Water Solutions to our testimony for the Board's convenience. As can be seen from those water treatment companies, chlorine is essential to the effective treatment of drinking water and wastewater in municipal treatment systems. We have also included a background article on our company for your reference.

US Magnesium LLC is the only surviving magnesium metal producer in North America. It is located in Rowley, Utah on the shores of the Great Salt Lake. The lake is inexhaustibly rich in minerals like the magnesium chloride that is used in the US Magnesium plant and is the source of other raw material for plants for production of potash and salt. US Magnesium is one of the world's largest commercial users of solar energy to remove water via an extensive system of evaporative ponds in order to

concentrate raw brine so that the lake's magnesium chloride can be efficiently electrolyzed to produce magnesium and chlorine.

Magnesium is critical to aluminum alloying for beverage cans and all aluminum sheet such as truck bodies, aircraft skins and many aluminum castings as well. Magnesium usage in the automobile industry is growing and helps reduce weight and therefore fuel consumption. Magnesium is irreplaceable in producing Titanium, Zirconium, Beryllium and Uranium for aircraft, nuclear and chemical uses, and is also important in military applications such as fuels, explosives and flares. Magnesium is thus critical for a growing economy, provides several environmental benefits, and is important in national defense as well.

The benefits of chlorine to the economy and to the national health and well being are well known and well documented in this proceeding by the testimony of the Chlorine Institute and others. However, it must also be noted that without the production, sale and transport by rail of chlorine from our Rowley plant, it is highly doubtful that US Magnesium could stay in business producing only magnesium. US Magnesium and its predecessors developed an entirely new technology that allowed chlorine to be extracted from magnesium chloride and captured for sale as a co-product of magnesium. Previously, chlorine had been vented to the atmosphere pursuant to Clean Air Act permits. That venting was wasteful, uneconomic and not environmentally beneficial. In 1989, the US Magnesium predecessor company emitted approximately 55,000 tons of chlorine to the atmosphere. By 2006, that number was reduced to nearly zero.

The inability to ship chlorine from our Rowley plant would possibly result in a closure of the magnesium plant and the accompanying elimination of the only North

American supply of that vital metal. Since the end user markets for products such as bleach and water treatment chemicals are so distant from our plant, and because bleach can only be shipped relatively short distances in the high temperatures of the west, economics preclude the production of these products at our plant in favor of safe shipment of chlorine to remote locations. If we were not able to ship chlorine and US Magnesium were able to stay in business, it would be forced to dispose of the chlorine co-product as it had in the past. In either case, these are highly unattractive consequences.

We have no doubt that the railroads would like to avoid the potential liabilities that follow from their negligent handling of chlorine and other TIH materials, but we also have no doubt that they are in a position to prevent those incidents that they so justifiably fear. In reality, however, we also recognize that the railroads don't really want to stop handling TIH materials that they move at rates that must be called astronomical. They simply want the shippers, who have no real power to prevent the railroads' negligence, to indemnify them for that negligence. If this Board were to hold that the railroads had no obligation to carry chlorine, the railroads would immediately demand that the shippers supply indemnification, or other liability protection for the carriers. That is what their claims are really all about.

Let me provide a specific example: Our Rowley plant is served by the Union Pacific. The Union Pacific and the other major carriers have, through their trade association, the Association of American Railroads, been demanding that shippers who own or lease chlorine rail tank cars convert to a new tank car of unproven design and performance characteristics, over the objection of the shippers and the Federal Railroad

Administration. This new car would, when fully loaded, weigh 286, 000 pounds as compared to the current 263,000 pound car. An additional metallurgical facility building a plant next to the magnesium plant to take advantage of numerous synergies in the production processes also wants to use the new car to handle its feedstock.

When we were in the process of leasing/purchasing many of the new 286, 000 pound cars, we both approached the Union Pacific and noted that the line leading from the main line to our plant was not able to handle the additional weight and should be upgraded. The Union Pacific declined to do so and said if it was to be upgraded the shippers should do it. When we said that we could not afford this expense, the Union Pacific said fine, just light load the new cars by leaving out about 18, 000 pounds of product per car. This would result in our shipping ten percent more cars and increasing the potential for accidents by that amount. When we pointed this out to the UP there was no response. We concluded that, notwithstanding their constant drumbeat about how they are concerned with safety, the UP was prepared to spend the shippers money to improve safety but not their own.

In conclusion, the railroads have been given a wholly unique position in the U.S. economy. They can charge extraordinarily high rates with impunity, they can operate without any meaningful competition in many industry sectors, and the government, through this Board seems to be constantly seeking to insure their inordinate profitability. All this is based on the need for the railroads to exist and that need is based on their willingness and ability to provide service on reasonable demand. To the extent that they are not so required one is forced to wonder why they are so pampered and protected. Without the common carrier obligation, perhaps the laws should be amended to allow

free and open competition to exist in the rail industry as it does in our industry and the other industries represented here today.

I want to thank the Board for its time and for its consideration of our comments.

Attachments:

Light Metals Article

Thatcher Chemical Company letter.

Kemira Waters letter