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October 29, 2009

BY HAND

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

Re: Docket No. 42116, U.S. Magnesium, L.L.C. v. Union Pacific
Railroad Company

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced matter please find the original and ten copies of Union Pacific's Answer to USM's Complaint.

An additional paper copy of Union Pacific's Answer is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosure

cc: Thomas W. Wilcox

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BEFORE THE
SURFACE TRANSPORTATION BOARD



US MAGNESIUM, L.L.C.,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42116

UNION PACIFIC'S ANSWER TO USM'S COMPLAINT

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October 29, 2009

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

U.S. MAGNESIUM, L.L.C.,)	
)	
Complainant,)	
)	
v.)	Docket No. 42116
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
)	

UNION PACIFIC'S ANSWER TO USM'S COMPLAINT

Defendant Union Pacific Railroad Company ("UP") hereby answers the Complaint filed by Complainant U.S. Magnesium, L.L.C. ("USM") in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP admits that USM operates a magnesium production facility at Rowley, Utah, on the Great Salt Lake. UP denies the allegations in Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.

2. UP admits that USM's facility at Rowley produces chlorine, which is the subject of USM's Complaint, and which UP transports in rail tank cars supplied by USM. UP denies the remaining allegations in Paragraph 2 because it lacks knowledge or information sufficient to form a belief as to their truth.

3. UP admits that it is the nation's largest railroad, by some measures; it provides common carrier service; it transports freight in interstate commerce; it is subject to certain provisions of the Interstate Commerce Commission Termination Act; and it is subject, in certain circumstances, to the jurisdiction of the Surface Transportation Board. UP denies the

remaining allegations in Paragraph 3 because it lacks knowledge or information sufficient to form a belief as to their truth.

4. UP admits that USM's Complaint lists five geographic locations and that UP provides service to one or more chlorine receiver at each location. UP denies the remaining allegations in Paragraph 4 because the Complaint does not identify specific receivers to which USM intends to ship chlorine, and thus UP lacks knowledge or information sufficient to form a belief as to their truth.

5. UP admits that USM is required to provide certain information regarding the issue movements by 49 C.F.R. § 1111 (a). UP denies that USM has accurately specified the "One-way distance" and "Number of cars in 2008" of all of the issue movements and avers by way of further response that USM's Complaint does not identify specific receivers to which USM intends to ship chlorine. UP also denies that USM has accurately specified the "Number of cars expected in 2009" because it lacks knowledge or information sufficient to form a belief as to its truth.

6. UP admits the allegations in Paragraph 6, except that UP denies that Paragraphs 7 and 8 accurately summarize the parties' discussions.

7. UP admits that USM requested common carrier tariff rates and service terms for rail service to the five destinations at issue in this case in a request dated January 16, 2009. UP denies the remaining allegations in Paragraph 7.

8. UP admits the allegations in Paragraph 8.

9. UP denies the allegations in Paragraph 9.

10. UP denies the allegations in Paragraph 10 because it lacks knowledge or information sufficient to form a belief as to their truth.

11. UP admits the allegations in Paragraph 11, except that UP denies that BNSF's inability to serve the Rowley facility prevents it from providing an effective alternative to UP; that the facts that the challenged rates were established by UP from origin to destination and that USM deals with UP for the movements reflect market dominance; and that there are no railroad alternatives that constrain UP's pricing power over the movement of chlorine from Rowley to the five destinations at issue in this case. UP avers by way of further response that USM's Complaint does not identify specific receivers to which USM intends to ship chlorine.

12. UP admits that numerous federal regulations affect the transportation of TIH commodities. UP denies the remaining allegations in Paragraph 12 because it lacks knowledge or information sufficient to form a belief as to their truth.

13. UP admits the allegations in Paragraph 13.

14. UP denies the allegations in Paragraph 14, except that UP admits that it could not prevail on the issue of whether there is qualitative evidence of effective competition from other carriers or modes of transportation for the movements of chlorine from Rowley to the five destinations at issue in this case under the standards currently being applied by the Board.

15. UP admits that the common carrier rates established by UP in Tariff 4949 for transportation of chlorine from Rowley to the five destinations at issue in this case produce revenues in excess of 180% of UP's variable costs of providing that transportation. UP denies the remaining allegations in Paragraph 15.

16. UP denies the allegations in Paragraph 16 because they relate to the process by which USM performed certain calculations and UP thus lacks knowledge or information sufficient to form a belief as to their truth.

17. Paragraph 17 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations this Paragraph.

18. Paragraph 18 states legal conclusions to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

19. Paragraph 19 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

20. UP denies the allegations in Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

22. UP admits that, currently with the filing and service of the Complaint, USM provided UP with a document entitled "Disclosure Pursuant to 49 C.F.R. § 1111.1(B)."

In response to the Complaint's "WHEREFORE" clause (pp. 10-11), including clauses numbered 1 through 4, UP denies that USM is entitled to any of the relief it seeks in this proceeding.

Respectfully submitted,



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October 29, 2009

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 29th day of October, 2009, I caused a copy of Union Pacific's Answer to USM's Complaint to be served by hand and by e-mail on:

Thomas W. Wilcox
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Jason M. Setty
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Michael L. Rosenthal