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** OF COUNSEL

February 4, 2010

EXPEDITED CONSIDERATION REQUESTED

Via E-Filing

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceeding

FEB - 4 2010

Part of
Public Record

Re: STB Docket NOR 42115, *US Magnesium, L.L.C. v. Union Pacific Railroad Company*

Dear Ms. Brown:

Attached for e-filing in the referenced docket is the Joint Second Motion to Extend Procedural Schedule submitted by the Complainant and Defendant in this case. Both a Highly Confidential Version and Public Version of the joint motion are being filed. Highly Confidential Information is redacted from the Public Version and is denoted with brackets { } in the Highly Confidential Version. As the current date for filing Opening Evidence in this case is February 16, 2010, EXPEDITED CONSIDERATION of this motion is requested.

Please feel free to contact me with any questions.

Sincerely,

Thomas W. Wilcox

Enclosure

cc: Michael L. Rosenthal, Esq. (counsel for Defendant)

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

U.S. MAGNESIUM, LLC)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42115
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	

JOINT SECOND MOTION TO EXTEND PROCEDURAL SCHEDULE

Come now, Complainant U.S. Magnesium, LLC (“USM”) and Defendant Union Pacific Railroad Company (“UP”) pursuant to 49 C.F.R §1104.7, and, for the reasons set forth herein, submit that there is good cause for the Surface Transportation Board to further extend the date for filing Opening Evidence in this proceeding – and the other due dates established in the procedural schedule in this case – as indicated below. The current procedural schedule and the proposed revised schedule are as follows:

	<u>Current</u>	<u>Proposed</u>
Complainant’s Opening Evidence	February 16, 2010	March 31, 2010
Defendant’s Reply Evidence	April 15, 2010	July 2, 2010
Complainant’s Rebuttal Evidence	May 17, 2010	August 2, 2010
Technical Conference	May 25, 2010	August 12, 2010
Final Briefs	June 18, 2010	September 1, 2010

In further support of this Motion, the parties state the following:

On December 22, 2009, USM received an updated version of UP's Second Disclosure, in which UP updated the data and calculations to incorporate the Board's 2008 URCS costs. Because the timing of USM's receipt of this information critical to its Opening Evidence was too close to the original filing date of February 1, 2010, the Board on January 15, 2009 modified the original procedural schedule in this case. However, numerous issues related to UP's Second Disclosure remain unresolved. Specifically, on January 20, 2010, USM submitted the attached letter to UP asking for additional information and data related to how UP's Second Disclosure calculated segment-specific traffic densities on the predominant routes of movement that it then incorporated into the calculation of cross-over revenues under the Board's Average Total Cost ("ATC") methodology. USM can discern UP's processes and replicate UP's calculations for some components of the Simplified Stand Alone Cost analysis, such as operating expenses and equipment costs, but USM has determined it cannot verify and/or replicate UP's calculations of the segment densities, costs and revenues UP has associated with the segments of UP's system covered by the complaint for purposes of applying ATC and calculating overall revenues. UP has agreed to provide supplemental information and data in response to USM's January 20 letter, but this information and data has not yet been provided to USM.

Moreover, UP has also experienced continuing problems producing to USM a correct version of its Second Disclosure. Specifically, UP's December 22, 2009 Second Disclosure was incomplete due to a "data setup error" that resulted in traffic associated with the route of the issue movement from USM's facility in Rowley, Utah to Torrance,

California not being fully assigned to the simplified stand alone railroad. Additional data errors prevented UP from supplying a corrected Second Disclosure to USM until Friday, January 29, 2010. Unfortunately, UP has determined that the January 29, 2010 version contains still more errors that will have to be addressed and a new Second Disclosure re-run and supplied to USM. As of the filing date of this motion, UP is determining how long it will take to re-run and produce a new Second Disclosure to USM.

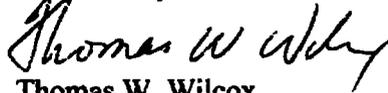
In summary, the Second Disclosure in this first case under the Simplified-SAC rules has entailed a significant volume of data and information that has proven in practice to be an extremely time consuming and complex undertaking. The parties are continuing their dialogue and exchange of information, but this process will not be completed in time for USM to receive, analyze, and effectively incorporate this data into its Opening Evidence. The proposed March 31, 2010 Opening Evidence filing date was selected to allow sufficient time for this process to be completed, and to accommodate the travel schedule of a key USM witness who will be out of the country between March 10 and March 20.

In conclusion, for the reasons set forth hereinabove, good cause exists for granting a further extension of the date for submitting Opening Evidence in this case to March 31, 2010, and the indicated extensions of the other filing dates on the procedural schedule, and such extension hereby is respectfully requested.¹

¹ UP recognizes that the proposed due date for its reply reflects an extension of the time period established in Simplified Standards. As UP explained in reply to USM's prior motion to modify the procedural schedule, UP's in-house and outside counsel have been working to juggle schedules in several pending matters before the Board that currently have filings due in late March (Finance Docket No. 35305); April (Ex Parte No. 385 (Sub-No. 7) and Finance Docket No. 35305), May (Docket No. 42113 and Finance Docket No. 35305), and June (Finance Docket No. 32187). UP does not expect to seek additional extensions of time in this proceeding, but reserves the right to do so in the event that the schedules in other proceedings are modified by the Board.

As indicated above, USM and UP seek EXPEDITED CONSIDERATION of this motion.

Respectfully submitted,



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Dated: February 4, 2010



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January 20, 2010

VIA E-MAIL AND REGULAR MAIL

Michael L. Rosenthal, Esquire
Covington & Burling, LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004-2401

RE: STB Docket No. NOR 42115, *U.S. Magnesium LLC v. Union Pacific Railroad Company*

Dear Mike:

On December 3, 2009 UP provided USM with additional work papers and information concerning UP's November 12, 2009 Second Disclosure. This material was provided in response to a letter from me to you dated November 23, 2009. While this information was helpful, our ongoing review of it and the other information and data provided with UP's Second Disclosure has given rise to several issues and questions which affect USM's ability to test the information provided and apply it in USM's Opening Evidence, which is now due on February 16, 2010. In particular, USM's experts have been unable to accurately ascertain and verify (1) the segment density data generated by UP and (2) the criteria UP used to decide which movements traveled over the predominant routes of movement during the Test Year, and which movements were excluded by UP.

Specifically, while one traffic data file in the [] database -- []- contain [] records [] of those records apparently do not register any miles on the predominant routes of movement associated with the challenged rates, which together constitute the simplified SARR in this case. Some of these [] movements are labeled as SARR segments. However, UP has apparently not provided basic information on

Michael L. Rosenthal
January 20, 2010
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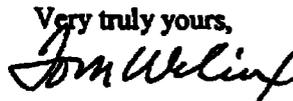
the excluded movements associated with these records, such as the origin and destination. UP provided origin and destination for traffic on the SARR in the table "[redacted]", but did not provide any origin and destination data for the excluded [redacted] movements in table [redacted]. UP can include this required information by adding fields 11-16 (respectively: Origin FSAC, Station, State, Destination FSAC, Station, State) to the table [redacted] or UP can provide a complete list of the [redacted] table that corresponds to the excluded [redacted] movements in table [redacted]. This is an important data requirement since without this data we have no way of verifying UP's selection process or matching on-SARR movements with off-SARR (UP Residual) movements. Please provide this table with fields 11-16 filled in for all movements or the complete [redacted] table, whether UP included them on the SARR or excluded them.

Related to this overall issue are three additional follow up requests by USM's experts to help them understand UP's Second Disclosure data related to densities and traffic on the SARR:

1. Please provide all data generated and/or outputted by [redacted] modules F.0 through F.6 in native, database, or text format with appropriate field descriptions and layouts.
2. Please provide Density, in net tons, by [redacted] segment for all on-SARR and UP Residual movements if the information is not provided in response request 1.
3. Please provide the Corridor Description [redacted] field for each segment number for all on -SARR and UP Residual movements.

Obviously, we would like to receive this information as quickly and efficiently as possible. If direct discussions between our respective experts would facilitate this process, USM would be in favor of that.

Please give me a call to discuss the foregoing, or if you have any questions.

Very truly yours,

Thomas W. Wilcox

Cc: Lou Anne Rinn, Esquire (via e-mail)