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** OF COUNSEL

January 5, 2010

Via E-Filing

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

Re: Docket NOR 42115, U.S. Magnesium, LLC v. Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for filing in this proceeding is Complainant U.S. Magnesium, LLC's Motion to Extend Procedural Schedule. As explained in the Motion, Defendant Union Pacific Railroad Company does not oppose USM's request, subject to the condition that the date for filing final briefs in this case be further extended to accommodate the schedule of another proceeding in which UP is a party. USM does not oppose UP's request, which UP has indicated it will address in a reply to this motion.

Sincerely,

Thomas W. Wilcox
Counsel for U.S. Magnesium, LLC

cc: 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.)	

MOTION TO EXTEND PROCEDURAL SCHEDULE

Comes now, Complainant U.S. Magnesium, LLC ("USM"), pursuant to 49 C.F.R §1104.7. and, for the reasons set forth herein, submits that there is good cause for the Surface Transportation Board to extend the date for filing Opening Evidence in this proceeding - and the other due dates established in the procedural schedule in this case - by two weeks. USM has conferred with Defendant Union Pacific Railroad Company ("UP") about this request and UP does not oppose the proposed extension, subject to a condition that USM does not oppose and which UP stated it intends to address in a response to this motion.¹

The current procedural schedule and the proposed revised schedule are as follows:

¹ USM understands UP's concurrence is conditioned upon the Board further extending the date for filing briefs in this proceeding an additional two weeks to accommodate filing dates pertaining to UP in another Board proceeding. USM has no objection to UP's request.

	<u>Current</u>	<u>Proposed</u>
Complainant's Opening Evidence	February 1, 2010	February 16, 2010 ²
Defendant's Reply Evidence	April 1, 2010	April 15, 2010
Complainant's Rebuttal Evidence	May 3, 2010	May 17, 2010
Technical Conference	May 11, 2010	May 25, 2010
Final Briefs	May 21, 2010	June 4, 2010 ³

In further support of this Motion, USM states the following:

This proceeding is the first rate case brought under the Simplified Stand-Alone Cost ("Simplified SAC") rules and procedures established in *Simplified Standards for Rail Rate Cases*, Ex Parte No. 646 (Sub-No.1)(served September 5, 2007)(*"Simplified Standards"*). A significant component of those rules is the Defendant's Second Disclosure, by which the Defendant supplies, among other information "(1) identification of all traffic that moved over the routes replicated by the SARR in the Test Year; (2) information about those movements, aggregated by origin destination pair and shipper, showing the origin, destination, volume, and total revenues for each movement, and (3) total operating and equipment cost calculations for each of those movements, computed in accordance with Appendix B, and provided in electronic format, so the complainant can readily estimate the total operating and equipment costs of the SARR." *Simplified Standards* at 25. 49 C.F.R. §1111.9(b). Appendix B of the *Simplified Standards*, sets out how operating and equipment costs are estimated using the defendant railroad's system average Uniform Rail Costing System ("URCS") costs, with various adjustments. Accordingly, the railroad defendant's Second Disclosure is a significant element of the

² The two week extension for Opening Evidence falls on February 15, which is a federal holiday.

³ UP's unopposed modification to this request would establish June 18, 2010 for the filing of final briefs.

Simplified SAC process, and the Board's URCS calculations for the defendant railroad are a critical part of the Second Disclosure.

Under the procedural schedule established in this case, UP's Second Disclosure was due on November 12, 2009, and UP timely served a Second Disclosure to USM on that date. A summary document accompanying UP's submittal stated that "the variable costs that were generated are based on the STB's 2007 URCS . . . inflated to the 2Q 2008 - 1Q2009 period for which the SARR traffic and revenues were identified." However, the STB had previously in October of 2009 released its 2008 URCS calculations, making the use of indexed 2007 URCS data in this case outdated. In response to an inquiry from dated November 16, 2009 on this issue, UP stated that UP intended to update its Second Disclosure to reflect 2008 URCS, and that 2007 URCS was used because "UP did not have the Board's 2008 URCS Master File for UP until after the Second Disclosures were due [on November 12], and UP needed the URCS Master File to make the adjustments to URCS that are required by Appendix B of Simplified Standards for Rail Rate Cases."⁴

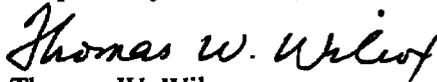
At that time, USM's experts concluded a minor delay in receiving the updated version of UP's Second Disclosure would not adversely affect the preparation of USM's Opening Evidence. However, the delay in issuing the required UP Master File extended well into December, 2009, and eventually resulted in UP - which USM believes acted in good faith throughout this process - serving its updated Second Disclosure late in the day on December 22, 2009, just before the start of the 2009 Holiday Season, when the availability of USM's counsel and experts to analyze and process the data became reduced. The six week delay in receiving the corrected Second Disclosure, combined with the timing of the receipt of this significant data, has resulted in USM receiving it

⁴ Letter from Michael L. Rosenthal to Thomas W. Wilcox dated November 19, 2009.

much closer to the current date for filing Opening Evidence than originally anticipated, and unduly complicating the preparation of such evidence. Accordingly, an extension of that date is warranted. The two-week extension requested is reasonable under the circumstances, which also include the fact that this is the first case brought under the Simplified SAC rules and procedures. The two week period requested is also a fraction of the period between the date when UP's Second Disclosure was originally served and when the final version was received.

In conclusion, the delay in USM's receipt of UP's updated Second Disclosure, and the timing of its receipt, constitute good cause for granting a brief two week extension of the date for submitting Opening Evidence in this case and a corresponding extension of the other filing dates on the schedule, and such extension hereby is respectfully requested. As indicated above, USM seeks EXPEDITED CONSIDERATION of this motion.

Respectfully submitted,



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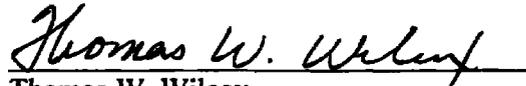
Attorneys for Complainant U.S. Magnesium LLC

Dated: January 5, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2010, I served a copy of the foregoing Motion to Extend Procedural Schedule upon counsel for the Defendant by electronic mail and by depositing same in the United States mail, first class postage prepaid, to the following address:

Linda J. Morgan, Esq.
Michael L. Rosenthal, Esq.
Covington & Burlington LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004


Thomas W. Wilcox