



January 2010

TRANSPORTATION UPDATE

U.S. Magnesium Wins Small Rate Case

In a decision issued by the Surface Transportation Board (STB) on January 28, 2010, U.S. Magnesium (USM) won a reduction in rail transportation rates on two chlorine movements from its facility in Rowley, Utah to Eloy and Sahuarita, Arizona. As shown in the table below, the decision marked a significant reduction in USM's chlorine transportation rates on the Union Pacific Railroad (UP). These lower rates will be in effect for no more than five years, or until \$1 million in relief is achieved, whichever comes first.

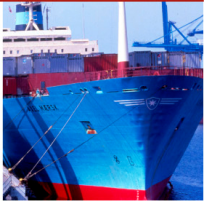
Rowley to	Loaded Miles	Challenged Rate	Variable Costs	Prescribed Rate
Eloy	1,290	\$13,396 per car 526% R/VC	\$2,549 per car	356% R/VC
Sahuarita	1,250	\$10,410 per car 419% R/VC	\$2,485 per car	346% R/VC

USM challenged the two UP chlorine tariff rates under the simplest standard available at the STB—the Three-Benchmark Methodology. Under this standard, the challenged tariff rates were compared to other rail transportation rates of UP, adjusted by a factor to ensure that UP is revenue adequate. After UP conceded that it had “market dominance” over the two chlorine rates, the case was largely decided by which party’s comparison group was selected by the STB.

The STB found that both parties’ comparison groups were “unappealing” in this case. An ideal comparison group would have included a large percentage of chlorine shipments, and would have been single-line UP service only. However, USM included mostly anhydrous ammonia shipments while the UP comparison group consisted of 58 percent re-billed, Rule 11 rates where two or more railroads are involved and each railroad bills the shipper separately.

In the end, the STB selected the USM comparison groups, after calculating that the weighted impact of USM’s minimal chlorine traffic was slightly less than the weighted impact of UP’s emphasis on re-billed traffic. The STB also found persuasive the fact that the R/VC ratio for the single-line chlorine traffic in UP’s comparison group was roughly identical to the R/VC ratio of USM’s comparison group. Commissioner Nottingham dissented from the decision due to the choice of USM’s comparison groups because they contained so little chlorine traffic.

Two additional noteworthy issues were addressed in the STB’s decision. First, the STB rejected UP’s request that the prescribed rates be adjusted upward to account for costs of implementing Positive Train Control (PTC), as mandated by Congress on most rail lines carrying toxic inhalation



hazards (TIH), such as chlorine. The STB found that a PTC adjustment to the prescribed rates was inappropriate because the costs had not yet been incurred by UP, they were too imprecise and, when UP does actually make the PTC investments, they will be reflected in the STB costing model (and, thus, will inevitably raise the USM rates).

Second, the STB increased the prescribed rates 14.8 percent as a “common carrier adjustment” to account for the fact that virtually all of the comparison group movements were contract rates. The STB said that, preferably, there should not be a common carrier adjustment. However, an adjustment was warranted in this case due to a scarcity of comparable movements in the Waybill Sample. Furthermore, the STB did not want to discourage railroads from entering into contracts by using low contract rates when determining STB-prescribed rates. The STB also noted that a common carrier adjustment should not be necessary in the future because of a newly commenced rulemaking in Ex Parte 385 (Sub-No. 7) that would require railroads to report 100 percent of TIH traffic in future Waybill Samples.

FOR MORE INFORMATION

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