BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF US MAGNESIUM LLC FOR APPROVAL OF A CONTRACT FOR THE SALE OF CAPACITY AND ENERGY FROM ITS EXISTING AND PROPOSED QF FACILITIES	DPU EXHIBIT 1.0 DOCKET NO. 03-035-38

Direct Testimony of

Artie Powell

On Behalf of

The Division of Public Utilities

September 10, 2004

Q: Please state your name, employer, position, and business address.

A: My name is Artie Powell; I work for the Division of Public Utilities ("Division") as a technical consultant and acting manager of the energy section; my work address is 160 E 300S Salt Lake City, Utah.

Q: Briefly describe your educational and professional background.

A: I earned a doctorate degree in economics with an emphasis in microeconomics and econometrics from Texas A&M University. For the past eight years, I have worked for the Division of Public Utilities. While at the Division I have worked on a variety of regulatory matters including the cost of capital, long-term purchase power contracts, low-income programs, and avoided cost calculations. In addition to working at the Division, I teach economics and statistics courses at Weber State University as an adjunct professor.

Q: Would you please explain the purpose of your testimony and briefly summarize your recommendations?

A: In this docket, US Mag is asking the Commission to approve a contract wherein US Mag would sell up to 32 MW per hour to PacifiCorp on a non-firm basis. The purpose of my testimony is to present the Division's position and recommendations concerning the proposed contract.

At this time, the Division has only seen a draft version of the proposed contract and, therefore, must respectfully decline making any final or definite recommendations to the Commission. However, it is our understanding that negotiations between PacifiCorp and US Mag are ongoing, and that a final version of the contract is imminent. The Division will continue to work with the other parties to reach a resolution of the outstanding contract issues and requests the right to file additional testimony and recommendations after reviewing a final contract.

With that said, the Division has reviewed the draft contract. Additionally, the Division participated in several technical meetings that were held to discuss various issues surrounding US Mag' proposal to sell power as a QF to PacifiCorp. As a result of our investigation, the Division acknowledges that the draft contract is, at least in general, consistent with the stipulation approved by the Commission in Docket No. 03-035-14. Furthermore, the Division does not see any major problems with the draft contract and expects that the parties will be able to reach agreement on the outstanding contract issues in time for the Division to file a final recommendation in advance of the scheduled hearing in this matter. In the event US Mag and PacifiCorp are unable to furnish the Division with a final contract in a timely manner, the Division will file a final recommendation based on the evidence and information at hand.

Q: On or about December 5, 2003 US Mag witness Mr. Swenson filed testimony in this proceeding, Docket No. 03-035-38, requesting approval of approval of a contract to sell power to PacifiCorp, is this the contract you are speaking of?

A: No. The contract I am referring to is a "new" contract that is the result of the still ongoing negotiations between PacifiCorp and US Mag in this proceeding and reflects the pricing and operating criteria put forth in the stipulation from Docket No. 03-035-14.

Q: Could you explain in more detail the basis of this new contract?

A: In his direct testimony in this proceeding, Mr. Swenson outlines a pricing methodology utilizing PacifiCorp's West Valley lease as a proxy to develop the avoided costs or prices for large QFs. This methodology, which Mr. Swenson refers to as the Next Deferrable

Plant or NDP, is the same methodology he advocated in Docket 03-035-14. This later docket, Docket No. 03-035-14, was initiated by PacifiCorp's application seeking approval of a IRP based avoided cost methodology. Several parties, including the Division, filed testimony in this later docket generally either in support of or in opposition to Mr. Swenson's methodology. For example, the Division filed testimony supporting a deferential revenue requirement methodology. Subsequent to the parties filing testimony, a series of discussions among the parties culminated in a stipulation to which US Mag is a signatory. This is the stipulation I earlier referenced.

The purpose of the stipulation was to put in place on an interim basis the avoided costs payable to large QFs. In addition to the avoided costs or prices, the stipulation specifies several pricing options and shaping factors, which shape the prices for on and off-peak periods, the operating characteristics which must be met by the QF, and a 275 MW cap before the prices must be recalculated. This stipulation is the basis for the contract which is the subject of ongoing negotiations between PacifiCorp and US Mag.

Q: Would you explain why you believe the proposed contract is consistent with the stipulation?

A: The draft contract uses the same pricing mechanism, shaping factors, and does not exceed the MW cap contained in the stipulation.

In Appendix A the stipulation reads, "For option (1), during hours that PacifiCorp does not dispatch the QF, and for option (2), during hours that PacifiCorp does not schedule the QF." Since US Mag would, under the contract, sell power to PacifiCorp strictly on a non-firm basis, PacifiCorp would not be dispatching or scheduling the QF. The Stipulation goes on to say, "the energy price shall be: (1) 0.93, multiplied by (2) the applicable On-peak, Off-Peak, or 24-Hour firm Palo Verde index … multiplied by (3) the applicable hourly [shaping factors]." This is the same pricing mechanism proposed in the contract, that is, 0.93 multiplied by the applicable Palo Verde index multiplied by the applicable shaping factors, where the shaping factors are those found in Appendix A of the Stipulation. The amount of power, which the contract identifies as up to 32 MWs, deliverable to PacifiCorp will not exceed the Stipulation's cap.

Q: Is US Mag requesting capacity payments in the new contract?

A: No. US Mag's original application in this proceeding does request capacity and energy payments for both its existing QF and for the proposed expansion to its QF. However, draft or new contract only request energy payments consistent with the stipulation as described above. Again, the new contract requests approval of avoided cost payments on a strictly non-firm basis.

Q: Does the Division have any concerns with the contract as it is proposed?

A: Yes, the Division does have several concerns with the contract as written. However, given that negotiations are continuing between US Mag and PacifiCorp, the Division will attempt to resolve these issues directly with the parties. In the event that the Division's concerns are not assuaged by the final contract, the Division reserves the right to file additional testimony and recommendations with the Commission.

Q: Does this conclude your testimony at this time?

A: Yes, it does.