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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>PACIFICORP, dba UTAH POWER & LIGHT CO.,</p>	<p>RESPONSE AND OPPOSITION OF US MAGNESIUM LLC TO PACIFICORP'S REQUEST FOR AGENCY ACTION</p>
<p>Petitioner,</p>	<p>Docket No. 04-035-20</p>
<p>vs.</p>	
<p>US MAGNESIUM LLC,</p>	
<p>Respondent.</p>	

Pursuant to Utah Code § 63-46b-6 and Utah Admin. Code § R746-100-3 (I), US

Magnesium LLC ("US Mag") hereby files its response and objection to PacifiCorp's Request for Agency Action in this docket dated April 5, 2004 ("Request").

Relief Sought by US Mag

US Mag requests that PacifiCorp's Request be denied and dismissed. The Request does not raise any legitimate dispute or issue with respect to compliance with this Commission's Orders.

The claim that US Mag has failed to pay \$4,361.46 per month for service to Magcorp prior to May 24, 2004 is inaccurate and inappropriate. PacifiCorp and US Mag recently stipulated to the amount and timing of any payments that may be required under the Commission's prior orders, upon resolution of the pending appeal. The Request thus violates the bankruptcy stipulation recently executed by PacifiCorp.

The claim that US Mag has failed to pay \$431,469.43 allegedly due under the Commission's prior orders is false and misleading. US Mag has made all required payments for service provided to it. The Request does not raise any legitimate issue of missed payments, but rather a disagreement between PacifiCorp and US Mag over the timing and application of payments made by US Mag and the amount and nature of security desired by PacifiCorp.

These disputes have nothing to do with the Commission Order referenced in the Request and should be deferred to and resolved in connection with Docket 03-035-19, in which US Mag is seeking approval of long-term electric supply arrangements.

Statement of Facts

1. In an Order dated May 24, 2002, in Docket 01-035-38 ("May 24, 2002 Order"), this Commission established certain terms and conditions to govern the supply of electric service by PacifiCorp to Magcorp and US Mag.

2. In conformity with the May 24, 2002 Order, PacifiCorp and US Mag signed a contract ("2002 Contract") effective June 24, 2002, for electric service to US Mag. The

Commission approved the 2002 Contract in an Order dated July 15, 2003.

3. US Mag has made every payment required by the 2002 Contract for service to US Mag. PacifiCorp's claim that \$431,469.43 is due for "electric service provided subsequent to the Disputed Period" is false and misleading. US Mag has made all required payments, but PacifiCorp has failed and refused to properly apply US Mag's payments against the appropriate invoices. PacifiCorp's claims do not relate in any way to the Commission's prior orders, but rather to the application of payments and security.

4. PacifiCorp and US Mag signed and submitted the 2002 Contract for Commission approval in May 2003. No mention was made by PacifiCorp in that filing of any alleged payment deficiencies or any other claimed payment or credit issues.

5. US Mag filed a petition on or about September 12, 2003 in docket 03-035-19 seeking determination of long-term economic incentive arrangements that will allow US Mag to remain in business and attract needed investment to make the plant more competitive with world markets. The issues raised by PacifiCorp in the Request over timing of payments and credit issues should be deferred to and resolved in that docket.

6. In an Order dated November 13, 2003, in Docket 01-035-38 ("November 13, 2003 Order"), the Commission approved a retroactive rate for Magcorp of \$21/MWH for energy delivered from January 1, 2004 to May 24, 2004. On January 30, 2004, US Mag filed a petition for judicial review of the November 13, 2003 Order with the Utah Supreme Court, and the matter was assigned to the Utah Court of Appeals, Docket 20040082-CA ("Appeal").

7. US Mag acquired most of Magcorp's assets and agreed to pay for utility services to Magcorp for certain periods prior to the closing date. Among the assets acquired by US Mag was a credit balance amounting to \$574,639.41 that was held by PacifiCorp.

8. In March of 2004, US Mag, PacifiCorp, and Magcorp entered into a Stipulation in the Magcorp bankruptcy docket, which was “so ordered” by the United States Bankruptcy Court for the Southern District of New York on March 25, 2004, (“Bankruptcy Stipulation”). A copy of the Stipulation is attached hereto.

9. Under the Bankruptcy Stipulation, if PacifiCorp prevails on the Appeal and a retroactive rate of \$21 is applied to Magcorp, the amount of \$622,615.42 will become due for service for the period from January 1, 2002 through June 24, 2002. After netting the available credit against that amount, the remaining difference of \$47,976.01 will be due by US Mag to PacifiCorp. If US Mag prevails on appeal, then PacifiCorp will owe it \$574,639.41. The Bankruptcy Stipulation requires that the required payment must be paid within ten days after the appeal is resolved.

10. As a result of the Bankruptcy Stipulation, no amount is due by US Mag to PacifiCorp for Magcorp’s alleged payment deficiencies until ten days after the appeal is resolved. The Request seeking to collect this payment is thus premature, inappropriate and in violation of the Bankruptcy Stipulation.

Response to Numbered Paragraphs

US Mag responds to each numbered paragraph contained in PacifiCorp’s Request as follows:

1. US Mag admits the allegations of paragraph 1 of the Request.
2. US Mag admits the allegations of paragraph 2 of the Request.
3. US Mag admits the allegations of paragraph 3 of the Request.

4. US Mag admits that PacifiCorp requests the Commission Order referenced in paragraph 4 of the Request, denies that PacifiCorp is entitled to the requested relief, and denies the remaining allegations of paragraph 4 of the Request.

5. US Mag admits the allegations of paragraph 5 of the Request.

6. US Mag admits the allegations of paragraph 6 of the Request.

7. US Mag admits the allegations of paragraph 7 of the Request.

8. US Mag admits the allegations of paragraph 8 of the Request.

9. US Mag denies the allegations of paragraph 9 of the Request.

10. US Mag denies the allegations of paragraph 10 of the Request.

Summary of Reasons Supporting Relief Sought by US Mag

PacifiCorp's Request is inappropriate, premature and misplaced. The parties have already entered into a stipulation as to the amount and timing of any payment that will be due as a result of the Commission's November 13, 2003 Order for service to Magcorp. No payment is required under the Stipulation until ten days after the Appeal has been resolved. Moreover, PacifiCorp's claim that money is due for service provided to US Mag under the 2002 Contract is incorrect and misleading. US Mag has paid all required payments. PacifiCorp has refused to properly credit the payments, and is seeking to obtain additional security by forcing additional pre-payments. These disputes should be resolved in Docket 03-035-19, which is scheduled to be heard this August.

DATED this ____ day of May, 2004

HATCH, JAMES & DODGE

Gary A. Dodge
Attorneys for U S Mag

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid,
this ____ day of May, 2004, to the following:

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