

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

PACIFICORP, dba UTAH POWER &
LIGHT CO.,

Petitioner,

vs.

US MAGNESIUM LLC,

Respondent.

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Docket No. 04-035-20

SUPPLEMENTAL DIRECT TESTIMONY

OF

GLENN BROOKS

OCTOBER 18, 2004

1 **Q. Are you the same Glenn Brooks that filed direct testimony in this case?.**

2 A. Yes I am.

3 **Purpose of Testimony**

4 **Q. What is the purpose of your testimony?**

5 A. In technical conferences since I filed my direct testimony, US Magnesium (“US
6 Mag”) has sought to portray this dispute as one of timing, rather than accounting.
7 That is, US Mag has agreed that if US Mag were to shut down operations and cease
8 receiving electrical service from PacifiCorp, after the QF credits to US Mag and
9 billings from PacifiCorp were netted against each other, US Mag would owe the
10 \$431,469.51 (“431,000”) sought in the Company’s complaint in this matter (plus the
11 \$47,976.01 carried-over from MagCorp). However, US Mag refuses to accept that
12 the \$431,000 has been due and owing since July 2002. Rather, US Mag essentially
13 seems to argue that when they make payments each month those payments are first
14 applied to zero-out any prior balances owed, and then the excess is applied to prepay
15 for current service. Thus, under US Mag’s apparent logic, the \$431,000 has already
16 been paid. It’s just that they keep coming-up \$431,000 short on their prepayments for
17 current service, on a rolling basis. US Mag further argues that this exposure is
18 adequately covered by the \$665,000 deposit held by PacifiCorp.

19 My supplemental testimony will address why US Mag’s position is erroneous.
20 The accounting documentation submitted in this matter demonstrates conclusively
21 that US Mag underpaid PacifiCorp \$431,469.51 for electrical service provided from
22 June 25, 2002 through July 31, 2002. That underpayment has never been rectified,

1 and US Mag's arguments about a rolling balance and use of the deposit are
2 inappropriate.

3 **Prepayment and the Use of the Deposit**

4 **Q. In technical conferences, US Mag has loosely analogized the \$431,000 to the**
5 **amount a customer accrues for electric service each month before paying the**
6 **prior month's bill. Does this analogy work?**

7 A. No. It is true that, for example, by the time a typical nonresidential customer has paid
8 for a prior month's service that customer has already begun to accrue new amounts
9 due for service in the current month. This type of payment lag does not apply to US
10 Mag, however, because under US Mag's contract it is required to prepay for the
11 service it receives.¹ On the 1st of each month, US Mag is required to make a
12 prepayment for the estimated amount of service it will receive from that day through
13 the 15th of the month. Then on the 15th, it makes a prepayment for the 15th through
14 the end of the month, plus a true-up payment (netting out credit for the QF sales to
15 PacifiCorp) to cover any short-fall in the estimated amount paid on the 1st (for the 1st
16 through the 15th) and the prior month's estimated payment for the 15th-30th.
17 Although the true-up mechanism is used to ensure that payment is current (since the
18 pre-payment can only be an estimate, the accuracy of which will vary depending on
19 actual usage that has not yet happened), the purpose of the prepayment is to have US
20 Mag pay for power on a forward-looking basis. Actual usage varies from the
21 prepayment amount, of course, and to the extent the prepayment estimate

¹ See Electric Service Agreement Between PacifiCorp and US Magnesium LLC ("Contract") at ¶ 3.6.

1 underestimates actual usage there is some “lag” in payment for the amount of actual
2 usage in excess of the estimated prepayment amount. However, this “true-up lag”
3 does not account for the \$431,000. That amount can be traced back precisely to the
4 summer of 2002, and has nothing to do with a rolling, monthly variance between
5 prepayment and actual usage.

6 **Q. Doesn't the \$665,000 deposit cover the Company's exposure to the \$431,000,**
7 **such that no Commission action is required at this time?**

8 **A.** No. US Mag essentially argues that PacifiCorp ought to tolerate the missing
9 \$431,000 because if US Mag ever missed a prepayment/true-up on the 1st or 15th,
10 PacifiCorp would be allowed to terminate service before the deposit amount (minus
11 the \$431,000) ran out and PacifiCorp was exposed. In effect, this is an argument,
12 roughly speaking, that \$234,000 is sufficient deposit (\$665,000 minus the \$431,000
13 already owed) to adequately protect PacifiCorp from a US Mag default.

14 The argument is misplaced. The deposit amount has nothing to do with
15 whether US Mag currently owes PacifiCorp the \$431,000 for service provided in the
16 summer of 2002. US Mag (and its predecessor MagCorp) had a \$475,000 deposit
17 held by PacifiCorp long before the \$431,000 became due in July 2002, and the
18 increase in the deposit amount to \$665,000, at the time the May 2003 contract was
19 entered, was intended to account for increased exposure caused by US Mag's
20 increased power usage. That is, with more power usage by US Mag, the old deposit
21 amount provided fewer days security in the event of a US Mag default. Again, neither

1 the \$475,000 deposit amount nor the later \$665,000 deposit amount had anything to
2 do with the missing \$431,000.

3 US Mag is, of course, free to seek specified deposit terms in its new contract
4 with PacifiCorp (and PacifiCorp has already made an offer in this regard). For the
5 time being, however, the amount of deposit is set at \$665,000 pursuant to Paragraph
6 3.10 of the Contract. PacifiCorp's tariff allows deposits for up to 90 days.² The
7 \$665,000 covers only approximately 16 days, based on US Mag's average usage
8 during the curtailment months. Thus, the current deposit is certainly not excessive in
9 comparison to the terms a tariff customer could receive; and, in any event, US Mag
10 ought not be allowed to decrease the contractual deposit amount by \$431,000, de
11 facto, by continuing to withhold payment for the past-due amount. Deposits are not
12 meant to cover past-due amounts. They are "intended to guaranty payment of bills."³
13 The simple fact in this case is that US Mag has a past due amount. The Commission
14 should grant the relief requested by PacifiCorp in this matter by declaring that past-
15 due amount to be due and owing.

16 **Q. Does this conclude your testimony?**

17 A. Yes it does.

² See Electric Service Regulation 9.1(a).

³ See *id.*