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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of US Magnesium LLC, for Determination of Rates and Conditions for Interruptible Service From and QF Sales to Rocky Mountain Power

**Docket No. 09-035-20**

**COMMENTS OF  
US MAGNESIUM LLC**

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US Magnesium LLC (US Mag) files these comments in support of the Application of Rocky Mountain Power for approval of an amendment (Amendment) of its Electric Supply Agreement with US Mag (ESA), and in response to comments filed by the Office of Consumer Services (OCS).

**Background**

The ESA was entered into between RMP and US Mag and approved by this Commission in 2009, and expires at the end of 2014. The Amendment deals solely with credit and payment terms included in the ESA that are no longer needed or appropriate. In Comments filed in this docket on September 12, 2012, the Division of Public Utilities (DPU) recommends approval of the credit Amendment. In Comments dated September 13, 2012,<sup>1</sup> the OCS “does not dispute”

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<sup>1</sup> The OCS comments were filed in Docket No. 11-035-182, which is the docket in which RMP’s original July 12, 2012 Application for approval of the Amendment was filed. RMP filed an

the requested credit Amendment, but attempts to raise wholly unrelated and inappropriate issues by requesting that, in approving the credit Amendment, the Commission should also order that “US Magnesium is now subject to ... the Company’s Energy Balancing Account.” The attempt by the OCS to insert EBA issues into this credit amendment filing is misplaced and inappropriate. The issues raised by whether and how the EBA should be applied to US Mag are complex and must be resolved in the EBA docket.

### **Policy and Practical Issues**

US Mag is not conceptually opposed to a Commission determination of whether and how it should participate in the EBA. However, the issues raised by such potential participation are far more complicated than is suggested by the simplistic request for an order that US Mag “is now subject to” the EBA. In recognition of those complexities, the US Mag ESA, which was approved by the Commission and stands effectively as an approved tariff, provides as follows:

"In the event the Commission adopts an [energy balancing account (“EBA”)] for [RMP] in Utah and applies the [EBA]to [US Mag], this contract will be amended as necessary, *as determined by the Commission in the [EBA] proceeding*" (emphasis added).

A determination of whether and how the EBA should be applied to US Mag must thus be raised in an EBA docket, and for good reasons.

Extension of the EBA to US Mag is not a simple or straightforward matter. In the first place, all pricing adjustments under the ESA must occur on January 1. More importantly, the current EBA surcharge is recovering deferred net power cost (NPC) deficiencies from 2010, when US Mag was obviously not subject to the EBA. Adding a 2010 EBA surcharge to US Mag’s invoices would be unfair and inappropriate, would violate the ESA and ESA approval

order, and would constitute illegal retroactive ratemaking. The same is true of the next EBA adjustment anticipated in early 2013 to true up NPC for the last quarter of 2011. Similarly, the RMP EBA filing to be made in March 2013, expected to become effective late in that year, will be to true up calendar year 2012 NPC. US Mag has not been subject to the EBA for at least the vast majority of 2012.

Even if the Commission were to determine that the EBA should be applied to US Mag prospectively, calculating the appropriate EBA balance as of that time, or determining an appropriate proration of the EBA adjustment surcharge/surcredit, would be very complicated. While estimated EBA variances are recorded monthly, the EBA balance is trued up only after the fact and on an annual basis. Determining the actual EBA balance or the appropriate portion of an EBA surcharge or surcredit as of any date other than the last day of a calendar year would introduce complicated and controversial valuation and proration issues. These types of issues would be minimized if US Mag were to become subject to the EBA starting on the first day of a calendar year.

Even if US Mag were to become subject to the EBA as of the first day of a future calendar year, or if an EBA balance and surcharge/surcredit proration could be determined appropriately for US Mag as of another date, other complications will also arise in applying EBA adjustors to US Mag. For example, for a number of historical reasons US Mag's current Commission-approved rates are not the same as general tariff rates, or full "cost of service" rates. As part of its approved contractual terms and conditions, US Mag is subject to market purchases and conditions at the time of the year where prices are most volatile. US Mag is already relieving PacifiCorp of a large share of these cost volatility risks for hundreds of hours per year.

In the event of an EBA deficit, charging US Mag the full EBA true-up percentage would mean that US Mag would pay a higher percentage of the true-up energy costs than it paid for the energy in the first place (ignoring the 70/30 sharing mechanism and ignoring the cost burden US Mag bears by being exposed to market). The same would be true if the EBA balance were positive: US Mag might get a higher percentage back than it paid per unit.

It is for these and other policy and practical reasons that the US Mag ESA approved by the Commission properly requires a determination of whether and how to extend the EBA to US Mag in the EBA docket. Only after those determinations have been made in an EBA docket, and conforming provisions have been added to the EBA tariff, can a conforming amendment to the ESA be approved.

### **Conclusion**

US Mag respectfully submits that the OCS' attempt to inject EBA issues into this unopposed ESA credit amendment is inappropriate, unfair and inconsistent with US Mag's rights under the ESA and the Commission order approving it. The DPU supports, and neither the OCS nor any other person has opposed, amending the dated and onerous ESA credit terms. Approval of the credit Amendment should not be delayed or held hostage to a totally unrelated and complicated issue raised belatedly and in an inappropriate context.

As noted above, US Mag is not opposed to a Commission determination of whether and how US Mag should participate in the EBA on a prospective basis. However, the complicated policy and practical implications of such a determination must be addressed in the EBA docket, followed by appropriate conforming EBA tariff and ESA amendments. US Mag respectfully submits that the proposed credit Amendment to its ESA should be approved as soon as possible,

and that whether and how the EBA should be applied to US Mag prospectively should be addressed with an appropriate filing in the EBA docket.

DATED this 15<sup>th</sup> day of October, 2012.

Hatch, James & Dodge

/s/ \_\_\_\_\_  
By: Gary A. Dodge  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 15<sup>th</sup> day of October 2012 on the following:

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