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DEPARTMENT OF COMMERCE
Office of Consumer Services

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Date: November 5, 2009

Subject: Office of Consumer Services' Comments on the Application of US Magnesium LLC, for Determination of Rates and Conditions for Interruptible Service from Rocky Mountain Power. Docket No. 09-035-20.

1 Background

On August 20, 2009, Rocky Mountain Power (Company) filed for Public Service Commission (Commission) approval of a five-year Electric Service Agreement (ESA or contract) between Rocky Mountain Power and US Magnesium LLC (US Mag). The current ESA expires on December 31, 2009. The new ESA would begin on January 1, 2010 and terminate on December 31, 2014. The Application was accompanied by the testimony of Paul H. Clements on behalf of Rocky Mountain Power and Roger J. Swenson for US Magnesium.

The special contract rates paid by US Mag have been below cost of service for many years. The terms of this ESA move US Mag closer to cost of service over the life of the contract.

2 Issues

In this memo the Office of Consumer Services will not address the specific pricing formula used to set rates in the ESA; rather we will restrict our comments to the provisions for changing contract rates and contract language addressing potential future issues that

may have an impact on other customers' rates.

2.1 Changes in Rates. The ESA has a term of five years, January 1, 2010 through December 31, 2014. Rates paid by US Mag will be moved toward cost of service over the life of the contract. In addition to the increases necessary to move toward cost of service, contract rates will be adjusted each January 1st from 2011 through 2014 to reflect the average percentage increase or decrease to the Schedule 9 class ordered by the Commission in the previous calendar year.¹

Rates for the ESA are based on the cost of service study from Docket No. 08-035-38 and take into account the interruptible rights in the agreement. US Mag's rates will not immediately be moved to cost of service but will increase gradually over the life of the contract with the percentage increase being greater in the early years and decreasing in the latter. Due to the magnitude of the disparity between US Mag's current rates and its cost of service the Office believes it is appropriate that the principle of gradualism be employed. It is also appropriate that larger percentage increases occur in the early contract period and decline over the five year contract term.

Because US Mag's rates will adjust only on January 1 of each contract year any increase resulting from general rate cases or single item rate cases² will not be reflected in US Mag's rates concurrent with other customers of Rocky Mountain Power. Generally, the Office believes that rates paid by special contract customers should automatically adjust when general rates are increased. We expressed our concern with this issue in comments regarding the ESA between Rocky Mountain Power and Kennecott LLC. That being said, the higher priority problem, the significant disparity between US Mag's rates and cost of service rates, is being significantly remedied within this contract time period. Because of this distinction we are not at this time recommending that US Mag's rates automatically adjust with general rate changes. However, at the end of the five-year contract if the parties apply for another ESA the Commission should require that the lag be eliminated and contract rates adjust for rate changes associated with Schedule 9.

2.2 Other Issues. In addition to increases associated with general rate cases, customers of Rocky Mountain Power face potential cost increases associated with existing and potential new programs.

The contract contains the following language addressing the application of costs from the potential implementation of an Energy Cost Adjustment Mechanism, Greenhouse Gas Emissions and major plant additions (i.e. single item rate cases).

- 1) Energy Cost Adjustment Mechanism (ECAM). In the event the Commission adopts an energy cost adjustment mechanism for Seller in Utah and applies the ECAM to Purchaser, this contract will be amended as necessary, as determined by the Commission in the ECAM proceeding;

¹The rate adjustment is calculated utilizing a formula described in the ESA.

²The calculation to adjust the contract rate will utilize increases or decreases to the Schedule 9 class ordered by the Commission in any general rate case or single item rate case during the prior calendar year.

- 2) Greenhouse Gas Emissions. In the event that any Greenhouse Gas costs are imposed on the Seller or Purchaser, the contract will be amended as necessary, as determined by the Commission in an appropriate proceeding.
- 3) Single Item Rate Case. Paragraph 3.4 Rate Adjustments. The Contract rate will be adjusted effective January 1 of each of 2011, 2012, 2013 and 2014 in order to reflect the average percentage increase or decrease to the Schedule 9 class, if any, ordered by the Commission in any general rate case or *single item rate case* during the prior calendar year.

Additionally, the contract acknowledges that if ordered by the Commission US Mag will be subject to the demand side management surcharge currently being assessed to Rocky Mountain Power customers other than special contract customers.

The Office agrees that special contract customers should bear their fair share of these costs as ordered by the Commission. The inclusion of this language in the contract eliminates the argument that these types of costs cannot be applied during the term of the contract.

3 Recommendation

The Office recommends that the Commission approve the ESA between US Mag and Rocky Mountain Power. We also recommend that the Commission put the parties on notice that future contracts will be required to contain a provision that contract rates will automatically increase when general rates are increased.