- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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 REPORT AND ORDER

ISSUED: December 23, 2009

By The Commission:

This matter is before the Commission on the Application of US Magnesium LLC (US Mag), for Determination of Rates and Conditions for Interruptible Service from and QF Sales to Rocky Mountain Power (RMP). A hearing was held before the Administrative Law Judge of the Commission on December 2, 2009. Present were the following: Daniel Solander was counsel for RMP. Paul Clements testified for RMP. Michael Ginsberg was counsel for the Division of Public Utilities (Division). Charles Peterson testified for the Division. Paul Proctor appeared for the Office of Consumer Services (OCS). Gary Dodge was counsel for US Mag. Roger Swenson testified for US Mag.

On August 20, 2009, RMP filed a proposed power purchase agreement (PPA) with US Mag for approval by the Commission. The current PPA succeeds the previous PPA approved in Docket No. 03-035-38 and expiring December 31, 2009. US Mag owns, operates and maintains a magnesium production facility, including an existing gas-fired generation facility located in Tooele County, Utah. The Nameplate Capacity Rating of the generation facility is 45 MW. The facility is operated as a qualifying facility (QF) as defined in 18 CFR Part 292. US Mag previously provided its FERC self-certification to Pacificorp. The PPA will run for a term of 12 months, from January 1, 2010 through December 31, 2010.

On August 20, 2009, RMP also submitted a proposed electric service agreement (ESA) with US Mag for Commission approval. This ESA is also a modification of the current ESA expiring December 31, 2009. The existing ESA was approved by the Commission in Docket No. 03-035-19. The ESA outlines the terms, pricing, and conditions under which RMP would continue to provide electric service, including interruption and curtailment, and replacement power to the US Mag facility. The proposed ESA is expected to run for five years—from January 1, 2010 to December 31, 2014. The US Mag cost of service is above the revenues RMP received under the ESA. Paul Clements testified that one of the purposes of this proposed ESA was to close the gap between revenues and cost of service over the five year term so that US Mag will be at or near its cost of service by the expiration of the proposed ESA. As Roger Swenson testified, the ESA is "front-end-loaded, with 30% of the difference between current rates and projected cost of service being made up in the first year, 25% in the second year, and decreasing by 5% each year to 10% in the final year." *Prefiled Direct Testimony of Roger Swenson*, p.5, ll.19-22.

The Division submitted its recommendation regarding the QF PPA and recommended approval, with one suggested condition. The Division's recommendation is detailed the process by which the line loss adjustment was calculated. The Division stated that the terms of the PPA comply with the Commission's guidelines and order in Docket No. 03-035-14. The Division noted that the PPA contains an avoided line loss adjustment of 4.36 percent. The Division's recommendation explained how the parties' reached the avoided line loss adjustment. It stated that "assuming avoided line loss adjustments are permissible in non-firm QF contracts, the Division concludes that there is a reasonable basis for the transmission line loss adjustment in this PPA." *Division Recommendation*, p.8. The Division also stated that it did not necessarily "endorse a line loss adjustment for all non-firm QF contracts or for future contracts with US Mag." It also recommended the Commission order RMP to provide the hourly power purchased under this PPA, on a quarterly basis, so the Division may monitor the contract and be better prepared to make recommendations in the future. RMP stated that it did not oppose the recommendation to provide the Division those quarterly reports.

The Division also made a recommendation regarding the electric service agreement (ESA) between RMP and US Mag. It recommended the Commission order the "parties to shorten the time between the approved changes in the pricing terms of the Schedule 9 tariff or other indexes and changes in the pricing terms of future ESAs to no more than 90 days." *Division Recommendation*, p.1.

The OCS submitted a written recommendation regarding the ESA also, recommending the Commission approve the ESA between US Mag and RMP. The OCS stated that it had some concern with the lag period US Mag was allowed when general rates were increased. It too recommended 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." *OCS Comments*, p.3. However, it also said that the "higher priority problem, this significant disparity between US Mag's rates and the cost of service rate, 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 the general rate case." *OCS Comments*, p.2.

At the hearing, Mr. Peterson testified regarding the lag period and why the Division recommended the reduction in lag time for future contracts:

> we also believe that to be . . . more consistent with other rate payers that a lag period that could go up to a year is inappropriate . . . . we believe that it's a reasonable compromise to request that this rate payer adjust their rates within a reasonable brief time after all the other rate payers adjust their rates, and 90 days strikes the Division as a reasonable compromise. It gives the Company additional time to plan . . . whatever it needs to absorb any rate increases . . . .

Transcript of December 2, 2009 Hearing, p. 8, ll.15-25, p.9, ll. -5.

US Mag opposed the Division and OCS's recommendations that the Commission "pre-impose conditions or terms on future contracts. Rather the terms and conditions of future contracts should be reviewed and determined only after the contracts have been presented for approval and in light of all circumstances relevant at that time. ", *Pre-filed Rebuttal Testimony of Roger Swenson*, p.2, ll. 8-11. US Mag's counsel argued as follows:

> I'll address [the possibility of the Commission ordering a reduction in lag period in future contracts] kind of more from a legal practical perspective than from a factual one. The suggestion presupposes the form of the contract that will be negotiated five years in the future. US Mag has had contracts with – special contracts with PacifiCorp for what, 45 years now. And only the last two have had any tie to a Schedule 9 reg. And that was done out of convenience, a way to make a longer term contract more -- a several year contract more palatable, perhaps, to the company and the regulators. But there's no requirement that a special contract have any tie to Schedule 9. And we don't believe, as Mr. Clements suggested, that you have before you an adequate record to take one item from the panoply of issues that will be considered, negotiated and presented for approval five years from now to bind a future commission or future parties negotiating that. I think it would be unseemly and inappropriate, and again, it presupposes the way that contract will be negotiated and the terms that will come down. If anything, it may drive at least US Mag away from tying into Schedule 9 because the timing of rate stability -- the rate stability issue, the timing of rate increases are very important to a company like US Mag. And so again, it may have unintended consequences of making them say then we won't tie it to Schedule 9 at all, we'll negotiate a different way increasing over time or

> something. So I just don't believe it's an appropriate restriction to impose on future negotiators and future commissions.

Transcript of December 2, 2009 Hearing, p. 6, ll.23-25, p.7, ll.1-25, p. 8, ll,1-4.

ORDER

The Commission approves the PPA and also orders RMP to provide the hourly power purchased under the PPA on a quarterly basis.

The Commission approves the ESA.

The Commission orders that the future ESA shall provide for automatic adjustment of US Mag's rates with the general rate changes. The Commission believes that a 90-day lag period is a reasonable time for US Mag's rates to adjust after a general rate increase. If, however, any party deems such a provision is not appropriate for the new ESA at the time it is submitted for approval, the party may petition the Commission for an order that the new ESA need not contain such a provision.

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 23rd day of December, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 23rd day of December, 2009, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#64873