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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase Rates by \$29.3 Million or 1.7 Percent through the Energy Balancing Account	Docket No. 12-035-67
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PREFILED REBUTTAL TESTIMONY OF ROGER J. SWENSON

US Magnesium LLC hereby submits the Prefiled Rebuttal Testimony of Roger J. Swenson.

DATED this 8th day of January, 2013.

/s/ _____
Gary A. Dodge,
Attorney for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 8th day of January, 2013, on the following:

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BEFORE
THE PUBLIC SERVICE COMMISSION OF UTAH

Rebuttal Testimony of Roger J. Swenson

on behalf of

US Magnesium LLC

Docket No. 12-035-67

January 8, 2013

1 **Q. Please state your name, business address, employer and position.**

2 A. My name is Roger Swenson. My business address is 1592 East 3350 South, Salt
3 Lake City, Utah 84106. My employer is E-Quant Consulting LLC and I am a
4 principal of that firm.

5 **Q. On whose behalf are you testifying?**

6 A. US Magnesium LLC (“US Mag”).

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. My testimony responds to a small portion of the direct testimony of Dan Gimble
9 on behalf of the Office of Consumer Services (“OCS”) that discusses the Energy
10 Balancing Account (EBA) and US Mag.

11 **Q. What is the term of the current Energy Services Agreement (ESA) between
12 US Mag and Rocky Mountain Power (RMP)?**

13 A. The ESA was signed and approved by the Commission in 2009 and became
14 effective on the first day of 2010. It expires at the end of 2014.

15 **Q. What does Mr. Gimble propose with respect to the EBA and US Mag?**

16 A. On page 8 (lines 223-225) of his testimony, Mr. Gimble says: “The Office
17 recommends that the Commission definitively rule on this issue and affirm that a
18 cost-based share of EBA deferrals should be applied to special contracts.”

19 **Q. What is your reaction to Mr. Gimble’s proposal?**

20 A. It is not clear exactly what he is proposing, as he offers no details. He appears to
21 be arguing generally that US Mag should participate in some manner in the
22 existing EBA pilot program. As US Mag has previously explained, it is not

23 conceptually opposed to a Commission determination that US Mag should
24 participate in the EBA. As it has also explained, however, several issues must
25 first be resolved as to precisely when that participation should begin and precisely
26 what form that participation will take. The OCS made no effort to address any of
27 these issues, making it impossible for US Mag to respond on a detailed basis.

28 **Q. Mr. Gimble argues that US Mag should be subject to the EBA because**
29 **Schedule 9 customers and one special contract customer are currently**
30 **participating in the EBA and it would be “unfair” and a “subsidy” for US**
31 **Mag not to participate. How do you respond to that argument?**

32 **A.** Although US Mag has reiterated that it does not object to a reasonable and
33 thoughtful approach to including it in the EBA, I reject Mr. Gimble’s
34 characterization. US Mag has a unique history and unique service characteristics
35 that make it inappropriate to properly compare it to Schedule 9 customers or other
36 special contract customers. The Commission approved US Mag’s unique contract
37 after taking into consideration many relevant historical and cost-based factors,
38 finding the contract to be just, reasonable and in the public interest. It is thus
39 inaccurate and inappropriate to argue that the Commission-approved terms and
40 conditions for interruptible service to US Mag are somehow “unfair” or include a
41 “subsidy” because US Mag does not participate in the EBA. Indeed, had the
42 Office believed that fairness required US Mag’s participation in the EBA, it could
43 have made those arguments in the 2009 docket in which US Mag’s ESA was
44 approved or more logically in the docket in which the EBA pilot was approved.

45 In either such docket, the complicated legal and policy issues discussed below
46 could have been timely and properly addressed. I also note that, while Mr.
47 Gimble refers to one special contract customer that apparently participates in the
48 EBA, he neglects to mention that the other two Utah-based special contract
49 customers do not so participate.

50 **Q. Mr. Gimble also argues that the issue of EBA and special contracts “has been**
51 **addressed several times and always deferred to another docket,” resulting in**
52 **“circular” arguments. Do you agree?**

53 **A.** No. In fact, this issue has been raised only by the OCS, and only in dockets in
54 which this issue could not be appropriately determined – such as the recent docket
55 seeking approval of a simple credit amendment to the ESA. The issue was not
56 raised in the appropriate dockets. Any “circularity” or deferral of this issue has
57 been a result of the Office’s failure to timely raise the issue in an appropriate
58 context.

59 **Q. Do you contend that this current docket is an inappropriate context for**
60 **resolution of this issue?**

61 **A.** I agree that the Office can make its proposal in this docket. There is, however, a
62 very big difference between making a general conceptual proposal, as the OCS
63 has done, and making a specific implementation proposal with supporting
64 evidence sufficient to permit US Mag to respond and the Commission to resolve
65 all relevant implications of the proposal. The OCS testimony fails to offer any

66 specifics, making a detailed or meaningful response by US Mag virtually
67 impossible.

68 The OCS is the only party that has proposed to change the currently-
69 approved EBA tariffs or to amend US Mag's ESA. As such, the OCS should
70 have provided specifics about, and evidence supporting, its proposal so that US
71 Mag could have meaningfully responded and the Commission could have
72 meaningful resolved any disputes. Its failure to do so leaves no basis for
73 determining specifically how and when US Mag should participate in the EBA
74 pilot program.

75 **Q. What kinds of issues and questions must be resolved before US Mag can**
76 **begin participating in the EBA?**

77 **A.** One major issue – not addressed at all by the OCS – is precisely when and how
78 such participation should commence to avoid retroactive ratemaking. The
79 Commission is certainly aware of this issue, given that its order approving an
80 EBA pilot implemented the program on a prospective basis only in order to
81 comply with statutory requirements and avoid retroactive ratemaking concerns.
82 (Corrected Report and Order, March 3, 2011, Docket 09-035-15, at 77).

83 Retroactive ratemaking issues could clearly be implicated by the OCS
84 proposal, depending on how it is interpreted. The proposal is that “a cost-based
85 share of EBA deferrals should be applied to special contracts.” The OCS makes
86 no attempt to explain what this proposal means in practice. It certainly cannot
87 properly mean that a percentage surcharge should suddenly be added to all of US

88 Mag's future invoices. Such an approach would obviously constitute retroactive
89 ratemaking. The current EBA surcharge is recovering deferred net power cost
90 (NPC) deficiencies from 2010, a time when US Mag was clearly not subject to the
91 EBA. Adding a 2010 EBA surcharge to US Mag's 2013 invoices would be unfair
92 and inappropriate, would be inconsistent with the ESA and the Commission's
93 Order approving the ESA, and would, in my non-legal opinion, clearly constitute
94 retroactive ratemaking.

95 The next potential EBA adjustment, which could occur in the next few
96 months, would be to true up any NPC deficiency from the last quarter of 2011.
97 Similarly, the EBA filing anticipated in March of this year, with an expected
98 effective date late this year, will be to true up calendar year 2012 NPC deviations.
99 Because US Mag was obviously not subject to the EBA at any time prior to 2013,
100 none of these EBA true-up adjustments can be charged to US Mag.

101 **Q. What if the Commission were to order that, beginning on the effective date of**
102 **its order in this docket, US Mag will begin participating in the EBA pilot?**
103 **Would that cause any complications?**

104 **A.** Yes. Even if the EBA were applied prospectively to US Mag, issues would arise
105 as to precisely what such participation would entail. Again, the Office offered no
106 evidence or suggestions on this issue, so it is difficult for US Mag to respond.
107 However, if US Mag were ordered to begin participating in the EBA
108 prospectively, the NPC deviations for the balance of 2013 would need to be
109 determined in some manner so that US Mag could begin paying or receiving the

110 corresponding EBA surcharge or surcredit in 2014 following issuance of a final
111 Commission order on the 2013 NPC imbalance. While it may not need to be
112 resolved in this docket, it could prove difficult to determine the precise portion of
113 the 2013 NPC imbalance that should apply to US Mag, given that it did not
114 participate in the EBA for the entire year.

115 **Q. Why might this be difficult?**

116 **A.** While estimated EBA variances are recorded monthly by RMP, the EBA
117 imbalance is ultimately trued up only annually after the end of each calendar year.
118 Determining the “actual” EBA imbalance for only a portion of a year may prove
119 difficult or contentious. Perhaps an appropriate proration of the total imbalance
120 could be determined but, again, the OCS has offered no specific proposals to
121 which US Mag can respond. If the Commission determines that US Mag should
122 begin participating in the EBA prospectively this year, the appropriate portion of
123 the 2013 NPC imbalance that should be attributed to US Mag would presumably
124 have to be determined in a future EBA docket. Perhaps these problems would be
125 less difficult if US Mag were to become subject to the EBA starting on the first
126 day of the next calendar year. Such timing would also comport with the current
127 ESA requirement that rate adjustments are to be done annually on January 1 of
128 each year.

129 **Q. Are there other complications that must be addressed?**

130 **A.** Yes. Mr. Gimble himself mentions some of the important issues. For example,
131 his testimony on page 7 says that Schedule 9 customers and one special contract

132 customer are paying “an appropriate, cost-based share of EBA amounts” and he
133 recommends on page 8 that “a cost-based share of EBA deferrals should be
134 applied to special contracts.”

135 **Q. Does Mr. Gimble explain how an appropriate cost-based share should be**
136 **determined or otherwise discuss any relevant factors associated with such a**
137 **determination?**

138 **A.** No, he simply states that US Mag is a significant load and that variations in
139 dispatch, fuel expense, power purchases and sales have a direct bearing on cost. I
140 agree that US Mag is a significant load but it is an extremely stable load. It is a
141 load that helps the Company utilize off peak and shoulder hour power that, in its
142 absence, would need to be dumped in the market. An important question to be
143 asked is which customer classes are causing the departure from expected costs
144 that are the basis for the EBA balances? Are they variances caused by usage from
145 stable high load factor customers like US Mag or are they driven by customers
146 that take more power during peak periods? Also, what portions of these EBA
147 balances are driven by temperature sensitive customers?

148 Another complication in including US Mag in the EBA pilot is that the
149 current ESA subjects US Mag to interruption or market purchases at the very time
150 of the year when prices are most volatile. US Mag is thus already relieving
151 PacifiCorp of a large share of the cost volatility risks addressed by the EBA for
152 hundreds of hours per year. The implications of these provisions for interruptions
153 and buy-through purchases must be dealt with in deciding precisely how the EBA

154 should apply to US Mag. Again, the OCS proposal is silent on these issues,
155 making it impossible for US Mag to respond.

156 None of these complicated legal, practical or policy considerations has
157 been addressed by the OCS, the only party proposing to change the current EBA
158 tariff and amend the current ESA. Given the limited record in this docket, I
159 believe the only thing that could properly be done in response to the OCS
160 proposal is to determine that US Mag should begin participating in the EBA
161 prospectively as of a specified date, and then leave to future EBA dockets the
162 determination as to exactly what that participation will mean in terms of true-up
163 payments or credits.

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

165 **A.** Yes.