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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION AND COMPLAINT OF US MAGNESIUM, LLC AGAINST DOMINION ENERGY UTAH	DOCKET NO. 17-057-13 COMPLAINT OF US MAGNESIUM, LLC AGAINST DOMINION ENERGY UTAH
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Pursuant to Utah Code Ann. §§ 63G-4-201, et seq., 54-3-1, 54-4-1, 54-4-4, and Utah Admin. Code R746-1-201, US Magnesium, LLC files this request for agency action and complaint against Dominion Energy Utah. In support of this Petition, US Mag represents as follows:

1. US Magnesium, LLC and its predecessors (“US Mag”) have long been customers of Dominion Energy Utah and its predecessors, Questar Gas Company and Mountain Fuel Supply Company (“Dominion”). US Mag is among Dominion’s largest and oldest customers.
2. US Mag operates facilities that extract magnesium from concentrated salt water brines on the western shore of the Great Salt Lake. Its operations are extremely energy intensive. US Mag pays livable wages to hundreds of full-time employees; its contribution to the economy

of the State of Utah has been estimated at more than one hundred million dollars per year. Because of intense international competition, US Mag is the sole surviving producer of magnesium in the United States. Its continued existence and competitiveness has and will always be dependent upon reasonable treatment by and rates of companies from which it is required to obtain monopoly utility services.

3. US Mag has purchased both firm and non-firm transportation services from Dominion for decades. US Mag can quickly shed certain turbine operations at the plant to drop its usage below its firm contract quantity when properly called upon to do so in the case of an emergency that threatens the integrity of the Dominion gas delivery system. In the case of past interruptions, Dominion employees have called and talked with US Mag employees to notify them of the emergency and the need for US Mag to curtail usage. As a result, US Mag has been able to timely comply with Dominion's instructions. Sometime prior to 2017, however, Dominion quietly switched to a new automated dialing system for notifying non-firm customers of emergencies that may require curtailment. Dominion did not notify US Mag of this change, did not adequately test its new automated system to ensure that it would work properly for US Mag in the event of an emergency, and did not use available technologies that would allow its new automated dialing system to enter emergency contact extension numbers.

4. On or about January 6, 2017, Dominion claims to have experienced emergency system integrity conditions that caused it to initiate interruption of non-firm transportation usage. US Mag did not interrupt its non-firm usage because it was not properly called upon by Dominion to do so.

5. As clearly demonstrated by the events of January 6, the automated notification system as utilized by Dominion has a significant flaw—it failed to dial through US Mag's

automated switchboard by entering the extension number needed to reach US Mag's emergency contact.

6. In 2016, as in prior years, Dominion prepared for signature by US Mag a Customer Information sheet, a copy of which is attached, that identifies Mike Tucker, US Mag's utility foreman, as the primary contact person for emergencies requiring interruption. Like many companies, US Mag uses an automated switchboard system that prompts the caller to enter an extension for the desired contact. Thus, Mr. Tucker's primary "Day Phone" contact number listed on the Customer Information sheet specifically includes his extension number.

7. Dominion never notified US Mag that its new automated dialing system would not enter the emergency extension number that US Mag had provided, and that it could thus not be used for emergency contact purposes. When US Mag learned (because of the events of January 6) that a direct dial phone is now required to receive emergency notices from Dominion, US Mag promptly made arrangements for a direct dial contact number in its control room, which is staffed all hours of all days. That direct dial number has since been successfully tested by Dominion. Had the automated system been properly tested prior to January 6, or had US Mag been properly informed that its specified daytime emergency contact number would no longer work, or had Dominion utilized available technology to design its system to enter an extension, US Mag could have received proper notice of its need to curtail usage on January 6 and would have complied. Instead, US Mag was not properly notified that it should curtail its usage.

8. Dominion initiated the January 6 interruption process on a weekday during normal business hours when Mr. Tucker was at the plant. In fact, Mr. Tucker was taking extra precautions that day to ensure constant access to his work phone because his gas supplier had warned him that conditions that day might lead to interruption. Presumably, Dominion's

automated system dialed US Mag's contact number. However, Mr. Tucker did not receive notice that he should curtail US Mag's usage because Dominion's untested automated dialing system did not enter the extension number specified on US Mag's Customer Information sheet.

9. The Customer Information sheet includes Mr. Tucker's cell phone number in case of emergencies during weekend or nighttime hours when he is not at the plant. Dominion left a voice message on Mr. Tucker's cell phone, but it did not timely or properly notify US Mag of its need to curtail usage because, for security reasons, US Mag does not allow cell phones at the plant. Mr. Tucker did not hear the recorded message until later that evening. Upon hearing the recorded message, Mr. Tucker was confused and uncertain of its meaning or import. He knew that he had not been asked to curtail usage at work, as expected and required for curtailment, and he could not figure out why he would have received a recorded message on his cell phone addressing curtailment earlier that day. He reasonably assumed that the recording must have been prompted by an earlier fear of Dominion that there might be problems with delivery of US Mag's gas supplies to the upstream pipeline; a concern that he now knew to have not materialized.

10. US Mag, and Mr. Tucker specifically, understands that a transportation customer cannot use more gas than the volumes delivered on its behalf by its upstream gas supplier during periods of potential constraint. Mr. Tucker had thus contacted his gas supplier that day to determine whether US Mag's gas supplies were being and would continue to be delivered. He was reassured that US Mag's gas supplies were in fact being delivered, and would continue to be delivered, upstream. Given that reassurance, and the lack of any notice of curtailment at work, Mr. Tucker reasonably concluded that no further action was required. Indeed, he did not learn that Dominion had actually expected US Mag to curtail its gas usage until days later.

11. Dominion's Customer Information sheet for US Mag also includes information for a backup contact person, Roger Swenson, US Mag's energy consultant. However, Mr. Swenson was traveling out of state when the curtailment notice was delivered and did not hear the voice message until much later. When he did receive the message, knowing that Mr. Tucker was at work that day and would be informed by Dominion of any need to curtail usage, Mr. Swenson focused on the same issue as Mr. Tucker. He contacted US Mag's gas supplier to confirm that US Mag's gas supplies were being delivered and asked to be notified if they were not delivered for any reason so that he could inform US Mag to further curtail usage below the daily firm contract limit as necessary to match upstream deliveries.

12. The Customer Information form prepared and provided by Dominion allows room for only one primary curtailment/emergency contact person and one secondary or backup person. US Mag has since learned that Dominion's automated notice system can accommodate many more than two contact persons. Had US Mag been given that information it would have provided Dominion with additional contact numbers—including to its control room—to ensure that it would receive emergency notices under all circumstances. Unfortunately, as with its failure to notify US Mag that it had adopted an automated system or that its chosen notification protocol would no longer dial US Mag's emergency contact extension, Dominion also failed to inform US Mag that additional contact persons and numbers could be accommodated.

13. US Mag has also since learned that Dominion's new automated emergency notice system is in fact capable of dialing extensions, if so programmed. Dominion, however, negligently or recklessly elected not to utilize available programming that would have allowed US Mag's emergency contact extension number to be entered.

14. US Mag reasonably assumed that Dominion would continue, as it had in the past, to take all available steps necessary to ensure that a live person at its plant with the practical ability to curtail gas usage would be notified in the event of an emergency. Likewise, US Mag reasonably assumed that Dominion would notify it before switching to an automated system that would not dial the primary emergency contact number listed on its Customer Information form. US Mag also reasonably assumed that Dominion would properly test a new emergency contact system, identify and take steps to mitigate any problems or limitations, and timely notify customers prior to implementing a new emergency notification system. In failing to do so, Dominion acted negligently and recklessly and failed to act in a reasonable or prudent manner with respect to all of its customers, including US Mag.

15. Luckily—for all involved—Dominion’s negligent and reckless behavior in this circumstance did not result in death, injury or damages. The consequences of Dominion’s reckless use of a new emergency contact system that would not reach US Mag’s emergency contact at the plant could, under other circumstances, have been catastrophic. In this instance, nobody was injured and nobody suffered any damages. US Mag did not curtail usage during the interruption because it was not properly called upon to do so, but US Mag’s supplier delivered US Mag’s gas into the system and the system handled those deliveries, showing that curtailment of US Mag’s usage turned out not to be necessary for the integrity of the system. Had circumstances been different, however, consequences might have been severe, highlighting the importance of Dominion taking all available and necessary steps to ensure that the primary emergency contact person at the plant actually receives notice of the actions required to ensure system integrity and safety—especially for large customers as to which the impacts of failure to act could be extremely significant.

16. Section 3.02 of Dominion’s tariff authorizes a penalty of \$40 per Dth, but only in the event of a “customer who fails to interrupt when *properly* called upon by the Company to do so.” US Mag was not properly called upon to interrupt on January 6, 2017. Dominion failed to call US Mag’s primary emergency contact person at work, who was anticipating the possibility of such a call and who was willing and able to comply with instructions. Leaving messages on back-up cell phones does not provide adequate notice, even if those messages are later received. Under all circumstances Dominion must, as a matter of prudence, and for the safety and well-being of all its customers, take all reasonably available steps—including in this case picking up the phone and calling Mr. Tucker—to ensure that US Mag’s primary emergency contact person received notice of the required usage curtailment.

17. Dominion has attempted to invoice US Mag penalties of \$241,822.02 for its alleged failure to curtail usage, and has threatened to disconnect service. While US Mag continues to pay undisputed portions of invoices, it is withholding the disputed penalty, as allowed by Dominion’s tariff, while it contests the improper penalties. Dominion has also purported to further penalize US Mag by charging it firm transportation rates for an additional 4,117 Dth per day for transportation service for three years—firm transportation that US Mag does not need and that Dominion cannot actually provide—which adds an additional unconscionable penalty of approximately \$112,000 per year at current rates. Dominion is thus demanding penalties from US Mag of approximately *half a million dollars* for an occurrence that would and could have easily been avoided had Dominion exercised reasonable diligence and that was directly caused by Dominion’s negligence and reckless behavior. US Mag respectfully submits that such a penalty is unauthorized, unreasonable and unconscionable under the circumstances, and unenforceable under Utah law.

18. US Mag respectfully submits that the Commission should reprimand and penalize Dominion for its negligent and reckless behavior and omissions that left all its customers at risk, potentially for many months. In all events, US Mag submits that the penalties Dominion seeks to impose on US Mag are not authorized by Dominion's tariff, are unjust and unreasonable under the circumstances, and are unconscionable. Indeed, US Mag maintains that Dominion should be responsible for US Mag's costs and expenses incurred in challenging the unreasonable and unauthorized penalties. While some such relief may need to be pursued through judicial or legislative avenues, this Commission clearly has the authority to order Dominion not to collect unauthorized or unconscionable penalties from US Mag.

19. US Mag has actively attempted to resolve this dispute with Dominion, to no avail. Dominion remains insistent upon collecting unconscionable and potentially-crippling penalties from US Mag, and refuses to take any responsibility for its negligent and reckless actions and omissions. US Mag asked the Division to review this issue; the Division has informed US Mag that Commission action is the appropriate means of resolving this dispute.

Wherefore, US Magnesium respectfully submits that the Commission should hold Dominion responsible in an appropriate manner for its negligent and reckless behavior and omissions that put its customers at risk. US Mag further submits that the Commission should direct Dominion to cease and desist from its improper efforts to impose unauthorized, unjustified and unconscionable penalties on US Mag. US Mag asks the Commission to set a date and a time for a scheduling conference so that a schedule can be established for discovery, testimony and hearings in this matter.

Respectfully submitted this 29th day of June 2017

HATCH, JAMES & DODGE

A handwritten signature in blue ink, appearing to read "Gary A. Dodge", with a long horizontal flourish extending to the right.

/s/

Gary A. Dodge
Attorneys for US Magnesium

Customer Information

Wed October 19, 2016

Company: **US MAGNESIUM**
 SAID: **7677760339** Magnesium Corporation of America
 Address: **Rowley**
 City, State, Zip: **Rowley, UT 84029**
 SIC Code: **3339 PRIMARY NONFERROUS METALS, NEC**
 Account Rep: **Bruce Rickenbach**

<u>Contact Name</u>	<u>e-Mail</u>	<u>Day Phone</u>	<u>Night Phone</u>	<u>FAX</u>	<u>Mobile Phone</u>
Roger Swenson	roger.swenson@prodigy.net	801 532-1522 529		801 534-1407	801 541-2272
Thomas Tripp		801 532-1522 259		801 532-1522	
Mike Tucker	mtucker@usmagnesium.com	801 532-2043 1337			801 597-6834

<u>Interruption Contacts</u>	<u>Title</u>	<u>Day Phone</u>	<u>Night Phone</u>	<u>FAX</u>	<u>Mobile Phone</u>
1ST: Mike Tucker	Utility Supervisor	801 532-2043 1337			801 597-6834
2ND: Roger Swenson	Energy Consultant	801 532-1522 529		801 534-1407	801 541-2272

<u>SAID#</u>	<u>Account Name</u>	<u>Type</u>	<u>Meter #</u>	<u>DCL</u>	<u>FIRM</u>	<u>RDU</u>	<u>Tax Xmpt</u>	<u>Agent Company</u>
7677760339	Magnesium Corporation of America	UTTS	31000005 31000013	21,000	15,000	20,035	Y	CIMA

<u>Code</u>	<u>Equip Description</u>	<u>Count</u>	<u>Input Rating</u>	<u>Total Input</u>	<u>Fuel Type</u>	<u>Alt Fuel</u>	<u>Comments</u>
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Do you anticipate any significant changes in your natural gas requirements this winter? Yes X No
 If Yes, explain: Less usage beginning in January 15% drop in average demand

I certify that the information listed above regarding our interruptible natural gas service on Questar Gas is correct. I understand that interruptible service is subject to periods of interruption. Our staff and alternate fuel system(s) will be prepared to interrupt natural gas service as soon as operationally possible within two hours of receiving notification from Questar Gas.

Signed: Roger Swenson Date: 12/12/2016

Certificate of Service
Docket No. 17-057-13

I hereby certify that a true and correct copy of the foregoing was served by email this 29th day of June 2017 on the following:

DOMINION ENERGY UTAH

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/s/ _____