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dba Dominion Energy Utah*

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

**DOMINION ENERGY UTAH'S
MOTION FOR SUMMARY
JUDGMENT AND SUPPORTING
MEMORANDUM**

Pursuant to R746-1-301 and R746-1-105 of the Utah Administrative Code, and Rule 56 of the Utah Rules of Civil Procedure, Respondent Questar Gas Company dba Dominion Energy Utah (“Dominion Energy” or “Company”), through counsel, respectfully submits this Motion for Summary Judgment and Supporting Memorandum (the “Motion”).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
RELIEF REQUESTED.....	1
INTRODUCTION	1
BACKGROUND FACTS.....	3
A. Dominion Energy’s Services to Transportation Customers.....	3
B. Dominion Energy’s Services Agreement with US Magnesium	4
C. The Tariff Authorizes the Company to Interrupt Interruptible Gas Services	4
D. Dominion Energy’s Method of Notifying Customers of an Interruption	5
E. Events Leading up to the January 6, 2017 Interruption Notice	5
F. Dominion Energy and US Magnesium’s Marketing Agent Notify US Magnesium of the Interruption	6
G. US Magnesium’s Response to Prior Interruption Notices	7
STATEMENT OF UNDISPUTED MATERIAL FACTS	8
A. The Transportation Services Agreement	8
B. The Relevant Tariff Provisions	9
C. The Company’s Method of Notifying Its Customers of an Interruption	10
D. US Magnesium Provides Contact Information to Dominion Energy for Interruption Notices	11
E. The Company Provides US Magnesium with Notice of the Interruption.....	13
F. Despite Receiving Undisputed Notice of the Interruption, US Magnesium Does Not Interrupt Its Natural Gas Usage	16
SUMMARY JUDGMENT STANDARD	17
ARGUMENT.....	18
I. DOMINION ENERGY’S INTERRUPTION NOTICE COMPLIED WITH THE TARIFF’S REQUIREMENTS	18
A. Dominion Energy Satisfied Its Obligations Under the Tariff by Sending Notice of the Interruption to US Magnesium	19
B. US Magnesium’s Claimed Excuses for Its Failure to Interrupt Are Unavailing.....	21
CONCLUSION.....	23

TABLE OF AUTHORITIES

	Page
Cases	
<i>Am. Airlines, Inc. v. Platinum World Travel</i> , 717 F. Supp. 1454 (D. Utah 1989).....	19
<i>Anderson Dev. Co. v. Tobias</i> , 2005 UT 36, 116 P.3d 323	17
<i>Cope v. Utah Valley State Coll.</i> , 2014 UT 53, 342 P.3d 243	18
<i>Doe v. Doe</i> , 878 P.2d 1161 (Utah Ct. App. 1994)	18
<i>Jachim v. KUTV Inc.</i> , 783 F. Supp. 1328 (D. Utah 1992).....	17
<i>McNeil Eng'g & Land Surveying, LLC v. Bennett</i> , 2011 UT App. 423, 268 P.3d 854	20
<i>Olympus Hills Shopping Ctr., Ltd. v. Smith's Food & Drug Ctrs., Inc.</i> , 889 P.2d 445 (Utah Ct. App. 1994)	20
<i>Reagan Outdoor Adver., Inc. v. Lundgren</i> , 692 P.2d 776 (Utah 1984).....	17
<i>Sunward Corp. v. Dun & Bradstreet, Inc.</i> , 811 F.2d 511 (10th Cir. 1987)	19
<i>Travelers/Aetna Ins. Co. v. Wilson</i> , 2002 UT App 221, 51 P.3d 1288	17
<i>Union Pac. R. Co. v. Structural Steel & Forge Co.</i> , 344 P.2d 157 (Utah 1959).....	19
Rules	
Utah R. Civ. P. 56(a).....	17
Utah R. Civ. P. 56(a)(3)	3
Other Authorities	
Tariff, § 3.01	4, 12

TABLE OF AUTHORITIES

	Page
Tariff, §§ 3.01-.02	4
Tariff, § 3.02	passim
Tariff, § 4.01	12

RELIEF REQUESTED

Dominion Energy seeks summary judgment in its favor on the relief sought by US Magnesium, LLC (“US Magnesium”) in its Request for Agency Action and Complaint against the Company, filed June 29, 2017.¹

INTRODUCTION

There is a single dispositive issue in this action: whether the notice Dominion Energy indisputably provided to US Magnesium requiring it to interrupt its natural gas usage on January 6, 2017 complied with the terms of the Dominion Energy Utah Tariff for Natural Gas Service in the State of Utah (“Tariff”). The answer to that question is unequivocally yes.

Prior to January 6, 2017, US Magnesium, which is one of Dominion Energy’s interruptible customers, received notice that a system interruption was likely to be ordered in the coming days due to anticipated cold weather. Consistent with that expectation, on January 6, 2017, the Company’s service area experienced extreme cold weather that caused system constraints. In response, and consistent with the Tariff, Dominion Energy sent *specific and direct* notice to each of its interruptible customers, notifying them to cease their interruptible usage within two hours of the notice. The notice further stated that any customers who failed to interrupt their gas usage within by that time would be subject to the penalties imposed by the Tariff. Dominion Energy delivered the notices using an automated notification system that deploys electronic calling, texting, and email to automatically and simultaneously provide notice to numbers or emails provided to the Company by each interruptible customer.

Because US Magnesium is an interruptible customer, on January 6, 2017, Dominion Energy delivered specific notice of the ordered interruption to US Magnesium using the telephone numbers and email addresses provided to Dominion Energy by US Magnesium.

¹ See Complaint of US Magnesium, LLC Against Dominion Energy Utah (“Complaint”), at 8.

Specifically, the notification system placed telephone calls to two land lines and two mobile telephone numbers for US Magnesium employees, sent emails to two separate US Magnesium employee email addresses, and sent text messages to two mobile telephone numbers belonging to two US Magnesium employees. US Magnesium admits that it received actual notice of the interruption through all but one of these means, but it nevertheless failed to interrupt its gas usage during the entire interruption. As a result, and consistent with the Tariff, US Magnesium incurred the monetary penalties imposed by the Tariff.

US Magnesium has refused to pay the monetary penalties for its failure to interrupt and, ultimately, filed the Complaint in this matter, attempting to avoid any consequence for its failure to interrupt. The Complaint and US Magnesium's related testimony filed in this matter are replete with belated and shifting excuses for US Magnesium's failure to interrupt. Most notably, US Magnesium contends that, *even though it admittedly received actual notice* of the interruption through multiple means on January 6, 2017, the notice did not comply with the Tariff because the Company's notification system was unable to dial through to two telephone extensions, and US Magnesium did not understand the other calls, emails and texts it received and did not know they were from Dominion Energy. These arguments are without merit.

The language of the Tariff does not require Dominion Energy to provide a particular type or means of notice of an interruption. It simply requires the Company to give timely notice of an interruption to each interruptible customer. It is undisputed that Dominion Energy fulfilled this obligation by sending timely interruption notice to US Magnesium's designated contacts, and, in fact, went above and beyond that obligation by personally calling US Magnesium after the notices went out and speaking to one of its designated contacts to make sure US Magnesium knew about the interruption. US Magnesium acknowledges that it received that call and other

notifications.

Further, the Tariff does not place the burden on Dominion Energy to ensure that interruptible customers understand an interruption notice or understand that the notice came from the Company. Rather, the Tariff places the burden squarely on US Magnesium (and all interruptible customers) to ensure that it designates contact personnel who understand an interruption notice and can take prompt action to ensure compliance with the notice. Thus, while it is dubious that US Magnesium's contacts did not understand the notices they received, or did not understand that the notices came from Dominion Energy, US Magnesium's failure to understand is irrelevant. Its designated interruption contacts were required understand and act on the notices they received, and if they did not understand the notices, it was their obligation to inquire further, which they failed to do.

The undisputed evidence overwhelmingly demonstrates that US Magnesium received the notice required by the Tariff, and that US Magnesium failed to heed the notice it received. Dominion Energy is entitled to summary judgment on US Magnesium's Complaint.

BACKGROUND FACTS

Pursuant to Utah Rule of Civil Procedure 56(a)(3), Dominion Energy submits the following background facts to provide context for this Motion. The Company's Statement of Undisputed Material Facts follows below.

A. Dominion Energy's Services to Transportation Customers

Dominion Energy provides both interruptible and firm transportation services to commercial and industrial customers.² A customer with firm transportation service is assured that it will receive a certain amount of natural gas each day. By contrast, an interruptible

² See Direct Testimony of Bruce Rickenbach ("Rickenbach Testimony"), at 1:22-2:23-26; Direct Testimony of Roger Swenson ("Swenson Testimony"), at 4:62-71.

customer is not guaranteed to receive a set amount of natural gas and may be required to reduce or interrupt its natural gas usage. Dominion Energy's transportation customers receive their gas through a marketing agent.³ A marketing agent purchases natural gas for customers and transfers that gas through the interstate pipeline system to Dominion Energy for redelivery to the transportation customer.⁴

B. Dominion Energy's Services Agreement with US Magnesium

US Magnesium is a firm and interruptible customer of Dominion Energy and has been for a number of years.⁵ US Magnesium receives gas from the Company under a Transportation Services Agreement (the "Agreement"), which is discussed in more detail below.⁶ The Agreement incorporates relevant provisions of the Tariff, which govern the natural gas services Dominion Energy provides to its customers.⁷

C. The Tariff Authorizes the Company to Interrupt Interruptible Gas Services.

Dominion Energy's interruptible gas service to US Magnesium is governed by Sections 3.01 and 3.02 of the Tariff.⁸ Section 3.01 of the Tariff authorizes the Company to interrupt an interruptible customer's natural gas usage to ensure that Dominion Energy has sufficient gas supplies for firm customers.⁹ Section 3.01 also provides that a customer's interruptible service is subject to interruption at any time.¹⁰ As explained in more detail below, Section 3.02 of the Tariff requires each interruptible customer to "provide, and update as necessary, contact information that enables [Dominion Energy] to immediately notify a customer

³ See Rickenbach Testimony, at 6:118-23.

⁴ *Id.*

⁵ Compl. ¶¶ 1, 3.

⁶ Direct Testimony of Mike Tucker ("Tucker Testimony"), at Exhibit 2.

⁷ *Id.* ¶ 1.

⁸ See Tariff §§ 3.01-02.

⁹ *Id.* § 3.01.

¹⁰ *Id.*

of a required interruption.”¹¹ Importantly, if the Company is unable to notify a customer using the contact information provided, and the customer fails to timely interrupt its gas usage, the customer is subject to monetary penalties prescribed by the Tariff.¹²

D. Dominion Energy’s Method of Notifying Customers of an Interruption

The Tariff does not designate the method by which Dominion Energy is required to notify customers of an interruption.¹³ The Company has over 500 transportation customers with more than 1300 individual contact numbers.¹⁴ As such, to ensure timely notification to its customers, Dominion Energy has for many years used an electronic notification system that sends out notice to interruptible customers using telephone numbers and email addresses provided by each interruptible customer.¹⁵ The current system is an electronic calling, texting, and email system that sends simultaneous messages to customers.¹⁶

E. Events Leading up to the January 6, 2017 Interruption Notice

In November 2016, Dominion Energy sent an email to US Magnesium regarding the upcoming natural gas interruption season.¹⁷ That email stated that the Company was preparing for the upcoming winter heating season and needed to ensure US Magnesium’s interruption contact information was accurate.¹⁸ In that regard, it asked US Magnesium to review and, if necessary, update a customer information sheet, and explained that Dominion Energy utilized the automated system to send out interruption notifications through telephone calls, emails and

¹¹ *Id.* § 3.02.

¹² *Id.*

¹³ *See id.*

¹⁴ Rickenbach Testimony, at 3:55-57.

¹⁵ *Id.* at 3:57-60.

¹⁶ *Id.* at Exhibit 1.3

¹⁷ *Id.*

¹⁸ *Id.*

texts.¹⁹ Finally, it reminded US Magnesium of its interruption obligations under the Tariff, including the potential restrictions on US Magnesium's gas usage in the event Dominion Energy sent out an interruption notice, as well as the penalties if US Magnesium failed to interrupt.²⁰

On December 12, 2016, US Magnesium responded by providing a signed, updated customer information sheet (the "Customer Information Sheet") to Dominion Energy.²¹ The updated Customer Information Sheet provided the email addresses and land-line and mobile telephone numbers for Roger Swenson and Mike Tucker, whom it identified as US Magnesium's "Interruption Contacts."²²

F. Dominion Energy and US Magnesium's Marketing Agent Notify US Magnesium of the Interruption.

Prior to January 6, US Magnesium's marketing agent informed US Magnesium that Dominion Energy was likely to order an interruption in the coming days due to expected cold weather.²³ On January 6, 2017, the Company's gas service territory experienced extreme cold temperatures, resulting in system constraints.²⁴ As a result, that morning, Dominion Energy delivered interruption notices to its interruptible customers, including to US Magnesium.²⁵ As explained below in the Statement of Undisputed Material Facts, Dominion Energy's electronic system called all four telephone numbers provided by US Magnesium (leaving messages where possible), sent emails to both email addresses that had been provided, and sent texts to both of the mobile telephone numbers listed in the Customer Information Sheet.²⁶ The Company also

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tucker Testimony, at Exhibit 4.

²² *Id.*

²³ Rickenbach Testimony, at 6:125-27.

²⁴ Tucker Testimony, at Exhibit 11.

²⁵ *Id.*

²⁶ Rickenbach Testimony, at Exhibit 1.8.

called and spoke directly with Roger Swenson to notify him of the interruption.²⁷

In addition to the notices provided by Dominion Energy directly, US Magnesium also received the following notices on January 6, 2017 from its own gas marketer:

- At 12:08 p.m., US Magnesium's marketing agent, Matt Medura, forwarded to US Magnesium a copy of Dominion Energy's interruption notice and indicated that he would keep US Magnesium up to date as information became available.²⁸ Around 1:30 p.m., Mr. Medura reduced US Magnesium's nominations to the required firm contract limit of 15,000 Dth.²⁹
- At approximately 5:00 p.m., the supplies delivered to US Magnesium were reduced to approximately 15,000 Dth as a result of Mr. Medura's nomination change earlier that day.³⁰ At 5:20 p.m., Mr. Medura notified US Magnesium that Dominion Energy was considering lifting the service interruption effective January 7, 2017 at 1 p.m. and indicated that he would keep US Magnesium posted.³¹

The Company ultimately lifted the interruption notice on January 7, 2017 at 1:00 p.m.³²

Despite have received so many notices, US Magnesium failed to interrupt during the entire noticed interruption.³³

²⁷ Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220, 11:221-227 & Exhibit 1.9.

²⁸ Rickenbach Testimony, at Exhibit 1.10.

²⁹ Direct Testimony of William Schwarzenbach ("Schwarzenbach Testimony"), at 3:53-55 & Exhibit 2.2.

³⁰ *Id.*

³¹ Rickenbach Testimony, at Exhibit 1.10.

³² *Id.*

³³ Tucker Testimony, at Exhibit 5.

G. US Magnesium’s Response to Prior Interruption Notices

The January 6, 2017 interruption notice was not the first time Dominion Energy had notified US Magnesium of an interruption using Dominion Energy’s electronic notification system. On December 31, 2014, Dominion Energy sent an interruption notice to US Magnesium using a system very similar to the current system.³⁴ In that instance, the system was unable to dial through to extensions, but US Magnesium nevertheless received notice through the other types of notification it received, including emails, text messages, and cellphone voice messages.³⁵ US Magnesium responded to the notices and decreased, in part, its usage after notification, incurring only a small penalty in that instance.³⁶

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The Transportation Services Agreement

1. Dominion Energy and US Magnesium entered into the Agreement in August 2013.³⁷ The service initiation date for the Agreement was July 1, 2015.³⁸
2. The Agreement requires the Company to “provide transportation service in accordance with the terms, conditions and provisions” of the Tariff.³⁹
3. Under the Agreement, US Magnesium obtained the right to receive firm and interruptible services from Dominion Energy:

The maximum daily contract limit is 28,000 Dth (the “Maximum Daily Contract Limit”). Of that amount, the first 15,000 Dth/day shall be transported pursuant to Tariff terms and conditions applicable to firm transportation services. The remainder shall be transported pursuant to Tariff terms and conditions applicable to interruptible transportation service.

³⁴ Rickenbach Testimony, at 4:67-69.

³⁵ *Id.* at 13:273-80.

³⁶ *Id.*

³⁷ Tucker Testimony, at Exhibit 2; Rickenbach Testimony, at Exhibit 1.2.

³⁸ Tucker Testimony, at Exhibit 2; Rickenbach Testimony, at Exhibit 1.2.

³⁹ Tucker Testimony, at Exhibit 2 ¶ 1; Rickenbach Testimony, at Exhibit 1.2 ¶ 1.

Company shall only be obligated to transport the lesser of (a) the firm portion of the Maximum Daily Contract Limit, (b) the Customer's natural gas supply nomination, or (c) the amount delivered to the Company on Customer's behalf by the upstream pipeline. . . .^[40]

B. The Relevant Tariff Provisions

4. Section 3.02 of the Tariff sets forth the Company's interruption rights and interruptible customers' obligations in the event an interruption is ordered.⁴¹

5. Section 3.02 provides (under the heading "Interruption Conditions"):

Service under interruptible service rate schedules is subject to temporary periods of interruption *upon notice by the Company*, whenever the Company determines interruption is required to serve firm sales service customers. Service may also be interrupted to inject gas into storage reservoirs, for maintenance or replacement of facilities or for other reasons related to service firm service customers. Resumption of service will not occur until the Company, at its discretion, can fulfill the demand of its firm service customers. The Company shall notify customers when service may resume.^[42]

6. Section 3.02 also provides, in relevant part (under the heading "Schedule of Interruption"):

All interruptible service is subject to simultaneous interruption. *Upon notice from the Company*, interruptible customers are required to interrupt as soon as is operationally possible, but no later than two hours from notice. The Company requires each interruptible customer to provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption. *In the event the Company is unable to notify a customer using the contact information, the customer may be subject to the charges and penalty described below.*^[43]

7. Section 3.02 further states (under the heading "Failure to Interrupt"):

⁴⁰ Tucker Testimony, at Exhibit 2 ¶ 3; Rickenbach Testimony, at Exhibit 1.2 ¶ 3.

⁴¹ See Tariff § 3.02 at 3-2.

⁴² *Id.* (emphasis added).

⁴³ *Id.* (emphasis added).

A customer who fails to interrupt when properly called upon by the Company to do so will incur a \$40-per-decatherm penalty for all interruptible volumes utilized during the course of an interruption. Each failure to interrupt will result in the imposition of the per-decatherm penalty. Any such penalties recovered by the Company shall be credited to the ratepayers as a reduction to the Infrastructure Rate-Adjustment Tracker.

If any interruptible customer fails to reduce or discontinue use of natural gas, and in the case of a transportation customer failing to interrupt or reduce gas usage nominations in accordance with this section, then the customers will pay the penalty and other charges as follows:

DNG	Supplier Non-Gas Cost	Commodity Cost
\$40.00/ Dth	SNG rate from the IS Rate Schedule	Highest gas cost during period of interruption

If a customer fails to interrupt when called upon by the Company to do so, then beginning on July 1st following the failure to interrupt, the customer will be moved from an interruptible rate schedule to an available firm rate schedule for three years for those interruptible volumes it failed to interrupt. To the extent that the Company determines that providing firm service is operationally infeasible, then the customer will pay a demand charge that would have applied for those interruptible volumes it failed to interrupt for three years, beginning on July 1st following the failure to interrupt, but will continue to receive interruptible service.

Under no circumstances will the penalty provision be considered as giving the customer the right to use gas during a requested interruption or restriction of service. Customers failing to comply with interruption required by the Company may also be subject to immediate termination or restriction of service.^[44]

C. The Company’s Method of Notifying Its Customers of an Interruption

8. Dominion Energy has over 500 transportation customers with more than 1300 individual contact numbers.⁴⁵ To notify each of its interruptible customers of ordered interruptions, Dominion Energy has, for a number of years, used an electronic notification

⁴⁴ *Id.* at 3-2, 3-3.

⁴⁵ Rickenbach Testimony, at 3:55-57.

system to provide that notice by telephone, email and/or text to numbers and email addresses provided by each interruptible customer.⁴⁶

9. At the time of the January 6, 2017 interruption, Dominion Energy had switched to the new automated notification system.⁴⁷ Like the Company's prior notification system, the new system is an electronic calling, texting, and email system that sends simultaneous messages to telephone numbers or email addresses provided by customers.⁴⁸

D. US Magnesium Provides Contact Information to Dominion Energy for Interruption Notices.

10. On November 29, 2016, the supervisor of account and municipal relations at Dominion Energy, Bruce Rickenbach, emailed Mr. Swenson at US Magnesium regarding the approaching winter season and to discuss, among other things, the potential for interruptions and contact information in the event of an interruption. The email states in relevant part, as follows:

Questar Gas (QGC) is preparing for the upcoming winter heating season. We need to assure your company contact information is correct. Please review the attached Customer Information sheet, and update all information for accuracy. Remember to sign at the bottom of the document and email the form to me as soon as possible whether you have made changes or not. We utilize a "Rapid Notify" system to alert our industrial and commercial customers of any interruptions or other important messages. This tool is an electronic calling, texting, and email system that sends simultaneous messages to ensure timely communications, so it is important to keep your contact information updated and to notify us of any changes.

....

Interruption

The interruption season runs from November through March, interruptions due to unforeseen circumstances may occur at any time of the year. All interruptible gas volumes, both sales IS and

⁴⁶ *Id.* at 3:57-60 & Exhibit 1.3.

⁴⁷ Rickenbach Testimony, at Exhibit 1.3; Tucker Testimony, at Exhibit 3; Swenson Testimony, at 6:114-18.

⁴⁸ Rickenbach Testimony, at Exhibit 1.3; Tucker Testimony, at Exhibit 3.

transportation TS, are subject to interruption. Interruptions may be geographic, full or partial. Upon notice of an interruption from QGC, interruptible customers are required to switch to an alternative fuel source no later than two hours from notification. If you don't have an alternative fuel source, you must remain within your contractual firm usage limits within two hours after notification. During an interruption, your firm contract limit will be equal to your daily firm contract limit (DCL) divided by 24 for each hour of the interruption. If you fail to stop using your interruptible gas volumes, you will be charged a penalty for each DTH not interrupted. Also, those interruptible volumes will be moved to a firm rate schedule for three years. Detailed information on the interruption process can be found under sections 3.01, 3.02 and 4.01 of our natural gas tariff: <https://www.guestargas.com/Tariffs/uttariff.pdf> or please contact me for further information concerning the interruption process.^[49]

11. US Magnesium responded to Mr. Rickenbach's email on December 12, 2016 by providing Dominion Energy with the signed Customer Information Sheet.⁵⁰ An true and correct image of the Customer Information Sheet is produced below:

⁴⁹ Rickenbach Testimony, at Exhibit 1.3; Tucker Testimony, at Exhibit 3.

⁵⁰ Tucker Testimony, at Exhibit 4; Rickenbach Testimony, at Exhibit 1.1.

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**

Contact Name	e-Mail	Day Phone	Night Phone	FAX	Mobile Phone
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

Interruption Contacts	Title	Day Phone	Night Phone	FAX	Mobile Phone
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

SAID#	Account Name	Type	Meter #	DGL	FIRM	RDU	Tax Xmpst	Agent Company
7677760339	Magnesium Corporation of America	UTTS	31000005 31000013	21,000	15,000	20,035	Y	CIMA

Code	Equip Description	Count	Input Rating	Total Input	Fuel Type	Alt Fuel	Comments
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Do you anticipate any significant changes in your natural gas requirements this winter? Yes 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*

http://beefy/qrs/dept/IndContact/web/report_custinfo.php

10/19/2016

E. The Company Provides US Magnesium with Notice of the Interruption.

12. On the morning of January 6, 2017, Dominion Energy declared an interruption and sent a notice of the interruption to all of its interruptible customers, including to the contacts identified in US Magnesium's Customer Information Sheet.⁵¹

⁵¹ Rickenbach Testimony, at Exhibits 1.7 & 1.8; Schwarzenbach Testimony, at 2:23-24.

13. At 11:11 a.m., Dominion Energy's notification system sent an email to Mr. Swenson at US Magnesium stating:

The Questar gas service territory is experiencing extreme cold temperatures and supply constraints. Firm load demand on the Questar Gas distribution system requires that Questar Gas implement a service interruption for customers with interruptible load.

Supply availability from upstream pipelines to the Questar gas system is also currently limited. Questar Gas is unable to provide additional supplied to make up for any shortfalls in the amount of gas being provided on your behalf to the Questar Gas system. As a result, even if you have enough firm capacity on the Questar Gas system to cover your usage, you are also required to limit your usage to not exceed the scheduled quantity being provided to the Questar Gas system for your use.

Your allowable usage for each hour will be the equal to the lesser of your firm contract amount divided by 24, or your scheduled quantity divided by 24, for each hour of the interruption. This will be calculated for each hour based on the scheduled quantity available for the applicable hours of interruption.

If necessary, please restrict your usage as soon as possible, but in no case more than two hours from this notice.

You will be notified by Questar Gas when the interruption is lifted.

Please call your nominating party (Marketing Agent) if you have any questions regarding your scheduled quantity of your Questar Gas representative with any questions regarding your firm contract limit.^[52]

Mr. Swenson admits having received this email.⁵³

14. At 11:13 a.m., Dominion Energy's system sent an identical email to Mr. Tucker.⁵⁴

Mr. Tucker admits having received this email.⁵⁵

⁵² Tucker Testimony, at Exhibit 6; Rickenbach Testimony, at Exhibits 1.6 & 1.8; Complaint ¶ 4.

⁵³ Swenson Testimony, at 9:185-88.

⁵⁴ Tucker Testimony, at 4:70-73 & Exhibit 11.

⁵⁵ *Id.*

15. At 11:15 a.m., Dominion Energy's automated system called Messrs. Swenson's and Tucker's cellphones and left voice messages, notifying them of the interruption.⁵⁶ The system also sent Mr. Tucker and Mr. Swenson text messages notifying them of the interruption.⁵⁷ Mr. Swenson admits he received the text message, and Mr. Tucker admits he received the voice and text messages.⁵⁸

16. US Magnesium claims that Mr. Swenson and Mr. Tucker did not understand the voice messages, emails, and texts they received and did not know who they were from, even though Mr. Swenson and Mr. Tucker had been informed an interruption from Dominion Energy was forthcoming, and the emails they received clearly referenced that "Questar Gas" was requiring the interruption.⁵⁹

17. US Magnesium also claims that Mr. Tucker was not permitted to use his cellphone during the day while he was at the plant and thus did not receive the interruption notice sent to his cellphone via text message and voicemail until after his shift.⁶⁰ Yet, even after he reviewed the messages after his shift, he did not take any action in response to the email or text message.⁶¹

18. Dominion Energy's system also called the land-line telephone numbers provided by US Magnesium, but those numbers were accompanied by extensions.⁶²

⁵⁶ Rickenbach Testimony, at Exhibit 1.8 & 8:165-66.

⁵⁷ *Id.* at Exhibit 1.8 & 8:166-68; Tucker Testimony, at 3:65-4:68; Swenson Testimony, at 9:178-82.

⁵⁸ Tucker Testimony, at 3:65-4:68 & Exhibit 6; Swenson Testimony, at 9:178-82; Rickenbach Testimony, at Exhibit 1.7.

⁵⁹ Swenson Testimony, at 16:344-50; Tucker Testimony, at 4:77-80.

⁶⁰ Swenson Testimony, at 12:243-57.

⁶¹ Rickenbach Testimony, at 11:239-12:245 & Exhibit 1.10; Tucker Testimony, at 3:65-66.

⁶² Rickenbach Testimony, at Exhibits 1.6, 1.8, & 9:185-86, 190-93.

19. Dominion Energy's notification system is unable to dial extensions.⁶³ As such, at 11:15 a.m., a voice message from the system was sent to US Magnesium's switchboard.⁶⁴ US Magnesium's switchboard operator received the message, and was informed that the message could be repeated by pressing any button on the phone.⁶⁵ However, the phone on which the message was received apparently had no buttons, and the operator hung up after hearing the message.⁶⁶

20. During the afternoon of January 6, 2017, and as a courtesy to US Magnesium, Mr. Rickenbach called Mr. Swenson on his cellphone regarding the interruption notice.⁶⁷ Mr. Swenson answered the call, and Mr. Rickenbach asked Mr. Swenson whether he had received the interruption notice.⁶⁸ Mr. Swenson indicated that he was traveling but had received the notice.⁶⁹

F. Despite Receiving Undisputed Notice of the Interruption, US Magnesium Does Not Interrupt Its Natural Gas Usage.

21. Despite receiving the foregoing interruption notices, and notice of the interruption from its gas marketer, US Magnesium did not interrupt its gas usage prior to the Company lifting the interruption.⁷⁰

22. As a result of US Magnesium's failure to interrupt, Mr. Rickenbach sent a letter to US Magnesium, informing it that, under the terms of the Tariff and the Agreement, and because

⁶³ *Id.* at 9:183-93 & Exhibit 1.9.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-227 & Exhibit 1.9.

⁶⁸ Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-227 & Exhibit 1.9.

⁶⁹ Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-227 & Exhibit 1.9.

⁷⁰ Rickenbach Testimony, at Exhibit 1.10.

US Magnesium used more natural gas than allowed during the interruption period from 2:00 p.m. on January 6, 2017 to 1:00 p.m. on January 7, 2017, US Magnesium would be penalized in accordance with Section 3.02 of the Tariff.⁷¹

23. US Magnesium has refused to pay the penalty amounts imposed by the Tariff.⁷²

SUMMARY JUDGMENT STANDARD

Under Utah law, summary judgment is proper when “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.”⁷³ “In considering whether there exists a genuine issue of material fact, the court does not weigh the evidence but instead inquires whether a reasonable jury, faced with the evidence presented, could return a verdict for the nonmoving party.”⁷⁴ Although the Commission must construe all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party, the movant need only point to those portions of the record that demonstrate an absence of a genuine issue of material fact given the relevant substantive law.⁷⁵ After the moving party has done so, the burden shifts to the nonmoving party to identify specific facts that show the existence of a genuine issue of material fact.⁷⁶ If the nonmoving party fails to “set forth facts sufficient to establish the existence of an element essential to that party’s case,” the court should grant the moving party’s motion for summary judgment.⁷⁷

⁷¹ Tucker Testimony, at Exhibit 1.

⁷² Compl. ¶ 17.

⁷³ Utah R. Civ. P. 56(a); *Travelers/Aetna Ins. Co. v. Wilson*, 2002 UT App 221, ¶ 7, 51 P.3d 1288.

⁷⁴ *Jachim v. KUTV Inc.*, 783 F. Supp. 1328, 1330 (D. Utah 1992).

⁷⁵ *See Reagan Outdoor Adver., Inc. v. Lundgren*, 692 P.2d 776, 779 (Utah 1984).

⁷⁶ *See id.*

⁷⁷ *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 23, 116 P.3d 323 (internal quotation marks and citation omitted).

ARGUMENT

I. DOMINION ENERGY'S INTERRUPTION NOTICE COMPLIED WITH THE TARIFF'S REQUIREMENTS.

In its Complaint, US Magnesium contends that the Company's interruption notice on January 6, 2017 failed to comply with the Tariff and constituted negligent and reckless conduct by Dominion Energy.⁷⁸ Specifically, it asserts that, because the Company's Rapid Notify system could not dial through to two extension numbers US Magnesium provided for its contacts, Dominion Energy did not provide proper notice of the interruption and its actions were negligent and reckless. US Magnesium's argument is clearly wrong.

“In order to prevail in an action for negligence, a plaintiff must prove that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused (4) the plaintiff to suffer legally compensable damages.”⁷⁹

“[R]eckless misconduct results when a person, with no intent to cause harm, intentionally performs an act so unreasonable and dangerous that he knows or should know, it is highly probable that harm will result.”⁸⁰

As demonstrated below, Dominion Energy fully complied with its notice obligation under the Tariff. First, the Tariff only required the Company to provide notice to US Magnesium of the interruption. The undisputed facts demonstrate that the Company did just that. It not only sent interruption notices to the contacts listed on US Magnesium's Customer Information Sheet and made a personal call to US Magnesium to make sure it knew of the interruption, but US Magnesium admits to having received actual notice of the interruption. Second, the language of the Tariff places the risk of non-delivery of notice on US Magnesium, and imposes no obligation

⁷⁸ Compl. ¶ 19.

⁷⁹ *Cope v. Utah Valley State Coll.*, 2014 UT 53, ¶ 11, 342 P.3d 243.

⁸⁰ *Doe v. Doe*, 878 P.2d 1161, 1163 (Utah Ct. App. 1994) (internal citation and quotation marks omitted).

on Dominion Energy to ensure each customer understands what the notice means. Thus, the Company is entitled to summary judgment on US Magnesium’s Complaint.⁸¹

A. Dominion Energy Satisfied Its Obligations Under the Tariff by Sending Notice of the Interruption to US Magnesium.

The Company’s and US Magnesium’s respective obligations under the Tariff are unambiguous and may be interpreted as a matter of law.⁸² Section 3.02 of the Tariff states, in pertinent part:

Service under interruptible service rate schedules is subject to temporary periods of interruption *upon notice by the Company*, whenever the Company determines interruption is required to serve firm sales service customers. ...

... Upon notice from the Company, interruptible customers are required to interrupt as soon as is operationally possible, but no later than two hours from notice. The Company requires each interruptible customer to provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption. In the event the Company is unable to notify a customer using the contact information, the customer may be subject to the charges and penalty described below.^[83]

Pursuant to this language, US Magnesium was obligated to interrupt its natural gas usage “[u]pon notice from the Company.”⁸⁴ The plain language of the Tariff does not specify a particular type of notice that is required, nor does it impose any requirement that notice be delivered to every contact number, email address or person provided by a customer for the notice to constitute “proper notice,” as US Magnesium contends. Indeed, such an interpretation would

⁸¹ Because US Magnesium’s negligence claim fails, its recklessness claim also fails. *Sunward Corp. v. Dun & Bradstreet, Inc.*, 811 F.2d 511, 526 (10th Cir. 1987) (recognizing recklessness “implies a higher degree of improper conduct than negligence” (emphasis omitted)).

⁸² See *Am. Airlines, Inc. v. Platinum World Travel*, 717 F. Supp. 1454, 1460 n.15 (D. Utah 1989) (“Tariff interpretation is generally a question of law.”); *Union Pac. R. Co. v. Structural Steel & Forge Co.*, 344 P.2d 157, 159 (Utah 1959) (recognizing that when tariff “words are used in their ordinary meaning, the construction is a matter of law”).

⁸³ Tariff § 3.02 (emphasis added).

⁸⁴ *Id.*

be unreasonable and nonsensical, and should be rejected, as it would exempt an interruptible customer from the penalties for not interrupting service even if the customer received notice of the interruption through one of the notification channels provided.⁸⁵ Rather, it is sufficient if the customer receives notice of the interruption through any of the channels provided.

In this case, there can be no legitimate debate about whether US Magnesium received proper notice of the interruption. On the morning of January 6, 2017, Dominion Energy declared an interruption and notified each of its interruptible customers of their need to cease any interruptible usage, including US Magnesium.⁸⁶ Specifically, the Company used the contact information provided in the Customer Information Sheet to notify US Magnesium of the interruption.⁸⁷ The Customer Information Sheet listed both Mr. Tucker and Mr. Swenson as “Interruption Contacts” and provided their email addresses and land-line and mobile telephone numbers as options to contact Mr. Swenson and Mr. Tucker.⁸⁸ Pursuant to the clear language of the Tariff, by providing this contact information to Dominion Energy, US Magnesium represented to Dominion Energy that notice to *any* of these channels of communication would “enable[] the Company to immediately notify” US Magnesium of an interruption.

Further, Dominion Energy sent notice of the interruption to both Mr. Tucker and Mr. Swenson through the email and telephone communication channels listed on the Customer

⁸⁵ See *Olympus Hills Shopping Ctr., Ltd. v. Smith’s Food & Drug Ctrs., Inc.*, 889 P.2d 445, 458 n.16 (Utah Ct. App. 1994) (“[C]ourts should avoid [an] unreasonable interpretation when [a] contract provision would be reduced to absurdity [.]”); *McNeil Eng’g & Land Surveying, LLC v. Bennett*, 2011 UT App. 423, ¶ 17, 268 P.3d 854 (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”) (citation omitted)).

⁸⁶ Fact ¶ 12.

⁸⁷ *Id.*

⁸⁸ *Id.* ¶ 11.

Information Sheet.⁸⁹ Between 11:11 and 11:15 a.m., Dominion Energy sent emails to Mr. Swenson and Mr. Tucker, left each of them a message on their cellphones, delivered a text to each of them, and attempted to call each land-line number identified, ultimately reaching US Magnesium's operator.⁹⁰ Each of these notices informed US Magnesium that it was required to interrupt its gas usage within the next two hours. Furthermore, although not required to do so, Mr. Rickenbach directly called Mr. Swenson on his cellphone to ensure that US Magnesium had received the interruption notices.⁹¹ Mr. Swenson answered the call, and Mr. Rickenbach confirmed that Mr. Swenson had received the interruption notice.⁹²

Dominion Energy's notification efforts fully complied with its obligations under the Tariff. US Magnesium not only received notice, but actually spoke with Mr. Rickenbach regarding the interruption. Furthermore, US Magnesium had received the same notice from its own gas marketer.⁹³ Thus, it is irrelevant whether the Rapid Notify system was unable to dial through to the two land-line extensions identified by US Magnesium. US Magnesium had not only sufficient notice, but actual notice of the interruption. Thus, its contention that the Company acted negligently or recklessly in its notification efforts is without merit. The terms of the Tariff and the undisputed facts entitle Dominion Energy to summary judgment on US Magnesium's Complaint.

B. US Magnesium's Claimed Excuses for Its Failure to Interrupt Are Unavailing.

In an attempt to avoid the penalties under the Tariff, US Magnesium offers several unsupported, after-the-fact excuses for its failure to interrupt. First, as noted above, it argues that

⁸⁹ *Id.* ¶¶ 12-15.

⁹⁰ *Id.*

⁹¹ *Id.* ¶ 20.

⁹² *Id.*

⁹³ *Id.* ¶ 21.

the notice was ineffective because the Company's notification system could not dial the extensions for two of the four phone numbers provided on the Customer Information Sheet. But, as explained above, that argument fails under the plain language of the statute and the undisputed facts. As an aside, this argument also rings hollow where the Company's prior electronic notification system could not dial extensions, and US Magnesium never claimed the other notices it received during prior interruptions were ineffective.

Second, US Magnesium asserts that, while its contact personnel received notice of the interruption, they did not understand that the email and text notices were ordering an interruption and that they came from Dominion Energy, even though each of the communications specifically referenced the Company in the context of the interruption notice.⁹⁴ It also argues that Mr. Tucker was not permitted to use his cellphone during the day while he was at the plant and thus did not receive the interruption notice sent to his cellphone via text message and voicemail.⁹⁵ As such, US Magnesium claims Dominion Energy's notices were insufficient. These arguments similarly fail.

The Tariff *does not* impose on Dominion Energy any obligation to ensure that each interruptible customer understands an interruption notice or understands that the notice is from the Company. Rather, the burden was on US Magnesium to provide up-to-date contact information for one or more individuals who could immediately be notified and address an interruption notice: "The Company requires each interruptible customer to provide, and update as necessary, contact information *that enables the Company to immediately notify a customer of a required interruption.*"⁹⁶ Moreover, the Tariff provides that, if Dominion Energy is unable

⁹⁴ *Id.* ¶¶ 12-16.

⁹⁵ *Id.* ¶ 17.

⁹⁶ *Id.* ¶ 6 (emphasis added).

to notify US Magnesium of an interruption using the contact information, the risks associated with that occurrence fall on US Magnesium: “In the event the Company is unable to notify a customer *using the contact information*, the customer may be subject to the charges and penalty described below.”⁹⁷ Given the obvious and potentially serious consequences associated with failing to interrupt, if US Magnesium’s contact personnel did not understand the notice or did not know whether it was really from Dominion Energy, they should have contacted Dominion Energy and inquired. Furthermore, if Mr. Tucker was not permitted to use his cellphone in the plant during his shift, US Magnesium should have either not used that number on the Customer Information Sheet or should have directly noted that on the document for US Magnesium. In any event, none of US Magnesium’s excuses is justifiable under the Tariff. It received actual notice of the interruption, and chose not to act on that notice.

CONCLUSION

The undisputed facts plainly show that US Magnesium received notice of the interruption from Dominion Energy and failed to interrupt its usage. All of US Magnesium’s excuses are unavailing. Therefore, Dominion Energy’s Motion should be granted.

DATED: February 2, 2018.

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⁹⁷ *Id.* (emphasis added).

CERTIFICATE OF SERVICE

This is to certify that on February 2, 2018, a true and exact copy of the foregoing

**DOMINION ENERGY UTAH'S MOTION FOR SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM** was emailed to the following:

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