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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 DOMINION ENERGY UTAH'S MEMORANDUM IN OPPOSITION TO US MAGNESIUM'S MOTION FOR SUMMARY JUDGMENT
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Respondent Questar Gas Company dba Dominion Energy Utah (“Dominion Energy,” “DEU,” or “Company”) respectfully submits this Memorandum in Opposition to US Magnesium, LLC’s (“US Magnesium”) Motion for Summary Judgment (“Motion”) as follows:

INTRODUCTION

The applicable law and the undisputed facts in this matter are straightforward and clear. The essential points are these: It is undisputed that Section 3.02 of the Company’s Tariff (“Tariff”) requires US Magnesium to provide accurate contact information through which its designated “Interruption Contacts” could *immediately* be contacted with interruption notices

from the Company. Second, under Section 3.02, US Magnesium was required within two hours of receiving “notice” of an interruption to interrupt its gas usage or pay penalties imposed by the Tariff. Third, on January 6, 2017, the Company declared an interruption and notified US Magnesium of that interruption in nine different ways using telephone numbers or email addresses US Magnesium had provided to the Company. US Magnesium admits it received all but two of those notices. Finally, US Magnesium concedes that, despite receiving the interruption notice, it did not interrupt its gas usage. These points are undisputed and demonstrate unequivocally that the Motion should be denied.

US Magnesium argues that the Company’s notice was not “proper” because its electronic notification system could not dial through to two of the telephone numbers US Magnesium had provided, but ignores the fact that the Company successfully provided notice to each of the other numbers and email addresses provided by US Magnesium. Moreover, US Magnesium *did not* specify in its Customer Information Sheet that any particular number or email address had to be used during specific timeframes, as it now claims. US Magnesium’s argument does not square with any cogent interpretation of the Tariff. The Tariff simply requires the Company to provide notice through one or more of the contact numbers or email addresses provided by US Magnesium. It does not require the Company to provide an interruption notice in a particular manner, or in a manner that US Magnesium subjectively “reasonably expected” but never explained to the Company.

It is irrelevant whether US Magnesium’s plant manager did not (or could not) have his mobile phone on him in the plant or did not check his email when the interruption notice was provided. US Magnesium never notified the Company that its employees, including Mike Tucker or Roger Swenson, could not use their mobile telephone numbers in the plant. Nor did

US Magnesium notify the Company of either man's hours at the plant or specify in the Customer Information Sheet that only certain contact numbers or email addresses could be used during the day or night. Under the Tariff, US Magnesium was required to provide accurate contact information that could be used by the Company to *immediately* provide interruption notice to US Magnesium. US Magnesium's failure to do so does not excuse its failure to interrupt. Rather, it further justifies the application of the Tariff penalties.

Furthermore, there is simply no merit to US Magnesium's claim that, because it did not recognize the text numbers and emails address from which it received the interruption notices, it was excused from compliance or further inquiry. The texts and the emails were very clearly from Questar Gas Company (Dominion Energy's predecessor). Had US Magnesium questioned the legitimacy of those emails, it could have contacted Dominion Energy. It chose not to do so and instead, simply ignored the notices and continued to use natural gas, in direct violation of the clear and unequivocal language in the emailed notice.

Even taking the facts as US Magnesium presents them, it is undisputed that the Company provided notice of the interruption to US Magnesium, by communicating directly to the Interruption Contacts identified by US Magnesium at the contact numbers and addresses US Magnesium had provided. US Magnesium admits receiving seven of the nine notifications. Its failure to interrupt cannot be justified by arguing that two of the nine notifications were unsuccessful.

The Motion is without merit and should be summarily denied. Dominion's Motion for Summary Judgment, however, is well founded and consistent with the undisputed facts and the Tariff. As such, it should be granted.

**DOMINION ENERGY’S RESPONSES TO US MAGNESIUM’S
“STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE”**

1. During all times relevant to this dispute, US Magnesium was a customer of DEU pursuant to a Transportation Service Agreement (“TS Agreement”).

Dominion Energy Response to Paragraph 1: Undisputed.

2. Pursuant to its TS Agreement with DEU, US Magnesium had a maximum daily contract limit of 28,000 Dth. (See Exhibit C (TS Agreement) ¶ 3).

Dominion Energy Response to Paragraph 2: Undisputed.

3. Of the 28,000 Dth/day maximum available to US Magnesium per day, the first 15,000 Dth would be subject to the tariff terms and conditions for firm transportation service and the remainder is subject to the tariff terms and conditions applicable to interruptible transportation service. (See *id.*).

Dominion Energy Response to Paragraph 3: Undisputed.

4. In other words, US Magnesium was a firm transportation customer for the first 15,000 Dth it utilized each day and was an interruptible transportation customer for any volumes exceeding 15,000 Dth. (See *id.*).

Dominion Energy Response to Paragraph 4: Undisputed.

5. Below, US Magnesium highlights several of the particular provisions of DEU Tariff § 3.02 that are central to this dispute.
- a. “All interruptible service is subject to simultaneous interruption.”
 - b. “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.”
 - c. “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.”
 - d. “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.”

- e. “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 the interruptible rate schedule to an available firm rate schedule for three years for those interruptible volumes it failed to interrupt.”

Dominion Energy Response to Paragraph 5: Incomplete, but undisputed. The Company acknowledges that the quoted language constitutes discrete excerpts of Section 3.02 of the Tariff. A complete recitation of the relevant portions of Section 3.02 is set forth in Paragraphs 5 through 7 of Dominion Energy’s Statement of Undisputed Material Facts in its Motion for Summary Judgment (“Dominion’s Motion”).

6. Consistent with the requirement in DEU Tariff § 3.02 that each customer “provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption,” US Magnesium provided phone numbers for DEU to contact in the case of an interruption. (See Exhibit A (Dec. 22, 2017 Direct Testimony of Roger Swenson (“R. Swenson Direct Test.”)) at lines 111-163).

Dominion Energy Response to Paragraph 6: Disputed in part, but irrelevant. The Company agrees that US Magnesium provided a signed Customer Information Sheet to Dominion Energy in December 2016 that included four telephone numbers and two email addresses for two identified “Interruption Contacts.”¹ However, when US Magnesium provided those numbers, it did not inform Dominion Energy that US Magnesium employees, including Mr. Tucker and Mr. Swenson, were not allowed to use their mobile telephones in the plant,² nor did US Magnesium ever tell the Company that Mr. Tucker’s or Mr. Swenson’s mobile telephone numbers were “not a reliable method of contacting US Magnesium on an interruption during the daytime hours,” as US Magnesium now claims in its Motion.³ Moreover, the Customer Information Sheet does not identify Mr. Tucker’s or Mr. Swenson’s cell phone as a “Night

¹ See Rickenbach Testimony, Exhibit 1.1.

² Affidavit of Bruce Rickenbach (“Rickenbach Aff.”) ¶ 4, attached as Exhibit A.

³ *Id.* ¶ 5; Motion at viii (Paragraph 15).

Phone” number or as numbers that could only be used during specified times of the day or night.⁴ US Magnesium admits that the Tariff places *on US Magnesium* the obligation to provide contact information “that enables the Company to *immediately notify* a customer of a required interruption.”⁵ Thus, as discussed below and in Dominion’s Motion, US Magnesium failed to provide proper information to Dominion Energy when it provided numbers that could not be used to immediately notify US Magnesium of interruptions. In any event, US Magnesium admits receiving actual notice of the interruption through texts and calls to Mr. Tucker’s and Mr. Swenson’s cell phones and emails to them.⁶

7. On November 29, 2016, DEU employee Bruce Rickenbach—DEU’s customer representative for US Magnesium—sent an email to Roger Swenson of US Magnesium attaching a Customer Information Sheet for US Magnesium to review and return. (*See* Exhibit A (R. Swenson Direct Test.) at lines 111-163; Exhibit D (B. Rickenbach Direct Test.) at lines 89-100 & 106-110. *See also* Nov. 29, 2016 email from Bruce Rickenbach to Roger Swenson, US Magnesium Direct Testimony Exhibit 3, attached hereto as Exhibit C).

Dominion Energy Response to Paragraph 7: Undisputed.

8. The Customer Information sheet attached to the November 29, 2016 email identified phone numbers for US Magnesium representatives Mike Tucker and Roger Swenson under a header titled “Interruption Contacts” that DEU already had on file. These phone numbers that DEU had on file for contacting US Magnesium in the event of an interruption contained extensions. (*See* Exhibit A (R. Swenson Direct Test.) at lines 148-153).

Dominion Energy Response to Paragraph 8: Partially disputed, but irrelevant.

Two of the four telephone numbers showing on the Customer Information Sheet did contain extensions, and all of the phone numbers on that sheet had previously been provided by US

⁴ *See* Rickenbach Testimony, Exhibit 1.1.

⁵ Tariff § 3.02 (emphasis added); Motion at 3.

⁶ *See* Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Roger Swenson Direct Testimony (“Swenson Testimony”), at 9: 176-10:204;11:227-239; Mike Tucker Testimony (“Tucker Testimony”), at 3:63-4:73; Exhibits 6, 11.

Magnesium prior to 2016.⁷ That same information was used during prior interruptions, and US Magnesium did not previously claim that it did not receive adequate notice, even though the Company’s prior notification system was also unable then to dial through to extensions.⁸ However, the fact that the notification system could not dial through to two extensions is irrelevant insofar as US Magnesium admits receiving the interruption notice by text, voice message, and email at numbers or email addresses provided by US Magnesium.⁹

9. In the November 29, 2016 email, Mr. Rickenbach requested that US Magnesium “review the attached **Customer Information** sheet, and update all information for accuracy.” (Exhibit C (Nov. 29, 2016 Email) (emphasis in original)).

Dominion Energy Response to Paragraph 9: Undisputed.

10. On December 12, 2016, Roger Swenson emailed Bruce Rickenbach, attaching a signed copy of the Customer Information Sheet that Mr. Rickenbach had sent via email on November 29. Having reviewed the Customer Information Sheet and determined that the listed Interruption Contacts were accurate, Mr. Swenson returned the Customer Information Sheet to Mr. Rickenbach without making any changes. (See Exhibit A (R. Swenson Direct Test.) at lines 123-153. See also Dec. 12, 2016 Email and Customer Information Sheet, US Magnesium Direct Testimony Exhibit 4, attached hereto as Exhibit C).

Dominion Energy Response to Paragraph 10: Undisputed.

11. The signed Customer Information Sheet that US Magnesium sent to DEU on December 12, 2016 identified Interruption Contacts at US Magnesium that DEU was to use to notify US Magnesium in the event of an interruption. The following is a screen shot of the Interruption Contacts portion of the Customer Information Sheet:

<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

⁷ Tucker Testimony, at Exhibit 4; Rickenbach Testimony, at Exhibit 1.1; Swenson Testimony at 6:123-7:132.

⁸ Rickenbach Aff. ¶¶ 6-7.

⁹ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9:176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

As the Interruption Contacts portion shows, directly beneath the header **Interruption Contacts**, the Customer Information Sheet lists two contact persons at US Magnesium for DEU to notify in the event of an interruption and several contact numbers for those individuals. The “1ST” identified Interruption Contact was Mike Tucker and the Customer Information Sheet listed a “Day Phone” and a “Mobile Phone” number to reach Mr. Tucker in the event of an interruption. The “2ND” identified Interruption Contact was Roger Swenson, and the Customer Information Sheet listed a Day Phone, FAX, and Mobile Phone number to reach Mr. Swenson in the event of an interruption. (See Exhibit C (Customer Information Sheet)).

Dominion Energy Response to Paragraph 11: Partially disputed, but irrelevant.

The above image is a portion of the Customer Information Sheet. A complete copy of that sheet is set forth in Paragraph 11 of the Statement of Undisputed Material Facts in Dominion’s Motion. Dominion Energy also disputes the implication in this paragraph that the only numbers that could be used during the day to provide notice of interruptions were the numbers listed under the “Day Phone” column of the Customer Information Sheet. The Interruption Contacts’ mobile phone numbers are not listed as “Night Phone” numbers. In fact, the “Night Phone” column was left blank by US Magnesium for both of the Interruption Contacts. Moreover, the Customer Information Sheet does not specify that the mobile phone numbers for the Interruption Contacts could only be used during certain times. In addition, the full Customer Information Sheet lists email addresses for both Mr. Tucker and Mr. Swenson.¹⁰ In any event, US Magnesium admits that it received actual notice of the interruption.¹¹

12. The Day Phone numbers listed for Mr. Tucker and for Mr. Swenson contained extensions and were the same phone numbers with extensions that were listed on the Customer Information sheet provided to US Magnesium by DEU on November 29, 2016. (See Exhibit C (Customer Information Sheet); Exhibit A (R. Swenson Direct Test.) at lines 123-142).

¹⁰ Rickenbach Testimony, at Exhibit 1.1.

¹¹ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

Dominion Energy Response to Paragraph 12: Partially disputed, but irrelevant.

See Dominion Energy Response to Paragraph 8.

13. Because of the way that DEU organized its Customer Information Sheet, US Magnesium expected that, in the event of an interruption, DEU would notify US Magnesium by utilizing the contacts listed under Interruption Contacts. (See Exhibit A (R. Swenson Direct Test.) at 205-219 & 240-257).

Dominion Energy Response to Paragraph 13: Disputed in part, but irrelevant. US Magnesium's subjective, but unexpressed, expectations are irrelevant. US Magnesium never communicated this subjective expectation to Dominion Energy.¹² And, on January 6, 2017, Dominion Energy contacted Mr. Swenson and Mr. Tucker using every means of contact identified on the Customer Information Sheet, including by telephone (land lines and mobile numbers), through texts, and through email, just as the Company has done in the past.¹³ Mr. Tucker and Mr. Swenson admit that they received the emails, the texts, and the messages on their mobile phones.¹⁴ Mr. Rickenbach also called and spoke with Mr. Swenson directly to make sure he received the interruption notices.¹⁵ Therefore, US Magnesium's claim that it only expected to be contacted through two of the designated telephone numbers is beside the point.

14. Moreover, US Magnesium expected that if an interruption occurred during daytime hours, that DEU would notify US Magnesium of the interruption by utilizing the Day Phone contact numbers listed on the Customer Information Sheet. (See Exhibit A (R. Swenson Direct Test.) at 240-257; Exhibit F (January 26, 2018 Rebuttal Testimony of Roger Swenson ("R. Swenson Rebuttal Test.))) at lines 97-103).

¹² Rickenbach Affidavit ¶ 5.

¹³ See *id.* ¶¶ 6-7; Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11..

¹⁴ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

¹⁵ Rickenbach Aff. ¶ 5; Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-27 & Exhibit 1.9.

Dominion Energy Response to Paragraph 14: Disputed, but irrelevant. *See* Dominion Energy Response to Paragraphs 6, 13. In any event, US Magnesium admits that it received actual notice of the interruption.¹⁶

15. For security purposes, US Magnesium personnel are not permitted to carry or use mobile phones in any area of the plant. For this reason, mobile phone numbers are not a reliable method of contacting US Magnesium of an interruption during the daytime hours. US Magnesium listed mobile phone numbers on the Customer Information Sheet because those numbers are a reliable way of reaching US Magnesium at times other than daytime hours. (*See* Exhibit A (R. Swenson Direct Test.) at 240-257; Exhibit B (Dec. 22, 2017 Direct Testimony of Mike Tucker (“M. Tucker Direct Test.”)) at lines 60-62).

Dominion Energy Response to Paragraph 15: Disputed, but irrelevant. *See* Dominion Energy Response to Paragraph 6.

16. Prior to the January 6-7, 2017 interruption, DEU did not inform US Magnesium that its automated notification system (described below) could not dial through to phone numbers with extensions or leave messages at phone numbers with extensions, and the Customer Information Sheet provided no such notice of this system limitation. (*See* Exhibit A (Roger Swenson Direct Test.) at lines 143-163; Exhibit F (January 26, 2018 Rebuttal Testimony of Roger Swenson (“R. Swenson Rebuttal Test.”)) at lines 28-42; Exhibit C (Customer Information Sheet)).

Dominion Energy Response to Paragraph 16: Disputed in part, but irrelevant. This paragraph assumes that US Magnesium was unaware that the Company’s notification system could not dial through to extensions. However, as noted, Dominion Energy used the same information US Magnesium provided to send interruption notices in the past, and the Company’s prior notification system used at that time could not dial through to extensions.¹⁷ As such, US Magnesium has not been notified of prior interruptions through calls to telephone numbers with extensions, but US Magnesium never complained that prior notices were not being made through the designated

¹⁶ *See* Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

¹⁷ Rickenbach Aff. ¶¶ 5-7.

extensions.¹⁸ In any event, US Magnesium admits that it received actual notice of the interruption.¹⁹

17. Since the January 6-7, 2017 interruption—during which DEU learned that its automated notification system (described below) cannot dial through to extensions or leave messages at phone numbers with extensions—DEU has changed its Customer Information sheet to state that “Dominion Energy uses a mass notification software system to alert customers of important messages. The notification system will not dial to an automated answering system, such as a system requiring menu inputs [sic] or an extension. Please provide direct phone numbers only.” (See 2017 Customer Information Sheet, US Magnesium Direct Testimony Exhibit 8, attached hereto as Exhibit 8).

Dominion Energy Response to Paragraph 17: Disputed in part, but irrelevant. The Company’s decision to change its form is irrelevant. The question at issue is whether US Magnesium received notice of the January 2017 interruption. It admits that it did.²⁰

18. DEU’s new form of Customer Information Sheet also no longer identifies “Interruption Contacts,” and has replaced that term with “Notification Contacts.” (See 2017 Customer Information Sheet, US Magnesium Direct Testimony Exhibit 8, attached hereto as Exhibit 8).

Dominion Energy Response to Paragraph 18: Undisputed, but irrelevant. The Company’s decision to change its form is irrelevant. The question at issue is whether US Magnesium received notice of the January 2017 interruption. It admits that it did.²¹ The change to the term “Notification Contacts” was made because the Company uses the contact information for more than just interruptions.²²

19. DEU’s Tariff does not state—either in Section 3.02 or elsewhere—how DEU must notify customers in the event of an interruption. (See generally Exhibit G (DEU Tariff § 3.02). See also Exhibit D (Jan. 12, 2018 Direct Testimony of Bruce Rickenbach (“B. Rickenbach Direct Test.”)) at lines 53-55).

¹⁸ Rickenbach Affidavit ¶ 7.

¹⁹ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

²⁰ *Id.*

²¹ *Id.*

²² Rickenbach Affidavit ¶ 8.

Dominion Energy Response to Paragraph 19: Undisputed.

20. In 2012, DEU began utilizing an automated notification system to notify customers of interruptions. (See Exhibit D (B. Rickenbach Direct Test.) at lines 57-60).

Dominion Energy Response to Paragraph 20: Undisputed.

21. DEU asserts that automated notification systems have the ability send emails, text messages, and automated voice messages to each contact person identified on the Customer Information Sheet. (See Exhibit D (B. Rickenbach Direct Test.) at lines 57-60).

Dominion Energy Response to Paragraph 21: Undisputed. In this regard, the Company notes that its notification system provided notice on January 6, 2017 to each Interruption Contact identified by US Magnesium. Mr. Tucker and Mr. Swenson, who are the Interruption Contacts, received notice of the interruption by telephone voice message, text message, and email, and, in the case of Mr. Swenson, direct telephone call as well.²³

22. From 2014-2016, the automatic notification system utilized by DEU was called “Rapid Notify.” (See Exhibit D (B. Rickenbach Direct Test.) at lines 65-69).

Dominion Energy Response to Paragraph 22: Undisputed, but irrelevant.

23. DEU asserts that the “Rapid Notify” system did not have the ability to connect through a phone extension or a switchboard. (See Exhibit D (B. Rickenbach Direct Test.) at lines 70-74).

Dominion Energy Response to Paragraph 23: Undisputed, but irrelevant.

24. For the 2016-2017 heating season, the Company switched to a new automatic notification system, called the SNS system. (See Exhibit D (B. Rickenbach Direct Test.) at lines 65-69).

Dominion Energy Response to Paragraph 24: Undisputed.

25. The new SNS system utilized by DEU during the 2016-2017 heating season did not have the ability to dial through to extensions or leave voice

²³ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

messages at extensions. (See Exhibit D (B. Rickenbach Direct Test.) at lines 61-64).

Dominion Energy Response to Paragraph 25: Undisputed.

26. When Mr. Rickenbach sent the November 29, 2016 email to Mr. Swenson requesting that US Magnesium determine the accuracy of the listed contact numbers, Mr. Rickenbach did not inform Mr. Swenson that DEU's new SNS automated notification system could not dial through to phone numbers with extensions or leave voice messages at extensions. (See Exhibit A (R. Swenson Direct Test.) at lines 153-157).

Dominion Energy Response to Paragraph 26: Disputed in part, but irrelevant. See

Dominion Energy Response to Paragraph 16.

27. At no time prior to the January 6-7, 2017 interruption did DEU inform US Magnesium that DEU's automated notification system could not dial through to extensions or leave voice messages at extensions. (See Exhibit F (January 26, 2018 Rebuttal Testimony of Roger Swenson ("R. Swenson Rebuttal Test.))) at lines 25-31).

Dominion Energy Response to Paragraph 27: Disputed in part, but irrelevant. See

Dominion Energy Response to Paragraph 16.

28. Indeed, in years prior to the January 6-7, 2017 interruption, US Magnesium had provided to DEU phone numbers with extensions for DEU to use to notify US Magnesium in the event of an interruption and—for interruptions that predate the January 6-7, 2017 interruption—DEU had successfully used those phone numbers with extensions to notify US Magnesium of interruptions. As such, US Magnesium had no reason to believe that DEU could not dial through to phone numbers with extensions to notify US Magnesium of an interruption. (See Exhibit F (R. Swenson Rebuttal Test.) at 38-49).

Dominion Energy Response to Paragraph 28: Disputed, but irrelevant. See

Dominion Energy Response to Paragraph 16. In addition, Mr. Swenson's statement is contrary to US Magnesium's statement in Paragraph 29 below.

29. Despite the fact that the "Rapid Notify" automated notification system that DEU had used since 2014 could not dial through to phone numbers with extensions, and despite the fact that the new SNS automated notification system that DEU employed for the 2016-2017 hearting [sic] season could not dial through to phone numbers with extensions, DEU sent a Customer Information Sheet to US Magnesium in November of 2016 that contained Interruption Contact

phone numbers *with extensions* that DEU could not to use to notify US Magnesium of an interruption, and did not notify US Magnesium that its automated system could not dial through to those phone numbers with extensions. (See Exhibit A (R. Swenson Direct Test.) at lines 123-142 & 148-153; Exhibit C (Customer Information Sheet); Exhibit C (Nov. 29, 2016 email); Exhibit D (B. Rickenbach Direct Test.) at lines 61-74, 89-100 & 106-110).

Dominion Energy Response to Paragraph 29: Disputed in part, but irrelevant. See Dominion Energy Response to Paragraph 16. In addition, the implication that US Magnesium could not be contacted because the Company's notification system could not dial extensions is false. As Mr. Rickenbach noted in his testimony, the Company requires each customer to provide at least two phone numbers specifically to ensure that notice can be provided even if one number does not work.²⁴ US Magnesium has admitted that it received notice of the January 2017 interruption through voice messages and texts to Mr. Swenson's and Mr. Tucker's mobile phone numbers, as well as through emails sent to their email addresses.²⁵ In addition, Mr. Rickenbach specifically called and spoke with Mr. Swenson on January 6, 2017 to ensure that he had received the interruption notice.²⁶

30. When US Magnesium learned—after the January 6-7, 2017 interruption—that DEU's automated notification system cannot dial through to phone numbers with extensions, US Magnesium installed a direct dial phone in its control room and has updated its Customer Information Sheet to make that direct dial phone, which does not require the use of an extension, its "1ST" Day Phone Interruption Contact for DEU to call in the event of an interruption. (See Exhibit A (R. Swenson Direct Test.) at lines 220-226; Exhibit C (2017 Customer Information Sheet)).

Dominion Energy Response to Paragraph 30: Partially disputed, but irrelevant. As noted in Dominion Energy's Response to Paragraph 16, during past interruptions, US Magnesium has never been notified through the extension numbers, as the Company's

²⁴ Rickenbach Testimony at 4:73-74.

²⁵ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

²⁶ Rickenbach Aff. ¶ 5; Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-27 & Exhibit 1.9.

notification systems have never been able to dial extensions.²⁷ This paragraph, however, is irrelevant insofar as US Magnesium received notice of the interruption through other numbers and email addresses provided by US Magnesium on January 6, 2017.²⁸

31. DEU experienced a system interruption beginning at approximately 11:11 a.m. on January 6, 2017 and lasting until approximately 2:00 p.m. on January 7, 2017. (See Exhibit D (B. Rickenbach Direct Test.) at lines 129-130 & 246-248. See also Exhibit E (Jan. 12, 2018 Direct Testimony of W. Schwarzenbach (“W. Schwarzenbach Direct Test.”) at lines 21-24).

Dominion Energy Response to Paragraph 31: Undisputed.

32. DEU sought to notify its customers of the interruption on January 6, 2017 using the SNS automated notification system. (See Exhibit D (B. Rickenbach Direct Test.) at lines 129-131).

Dominion Energy Response to Paragraph 32: Partially disputed, but irrelevant.

The Company did not just seek to notify its customers, it did notify its customers, including US Magnesium, of the interruption using its SNS automated notification system.

33. The SNS automated notification system failed to dial through to the Day Phone Interruption Contact phone numbers on US Magnesium’s Customer Information Sheet because the SNS system cannot dial through to extensions. As a result, DEU’s SNS system did not dial through to those phone numbers or leave voice messages at those extensions. (See Exhibit A (R. Swenson Direct Test.) at lines 246-251; Exhibit D (B. Rickenbach Direct Test.) at lines 61-64; Exhibit F (R. Swenson Rebuttal Test.) at lines 28-31; Exhibit B (Dec. 22, 2017 Direct Testimony of Mike Tucker (“M. Tucker Direct Test.”)) at lines 45-59).

Dominion Energy Response to Paragraph 33: Partially disputed, but irrelevant.

The SNS notification system did dial through to the land line Interruption Contact numbers on the Customer Information Sheet but, because the system could not dial extensions, at 11:15 a.m., a voice message from the system was sent to US Magnesium’s switchboard.²⁹ US Magnesium’s

²⁷ Rickenbach Aff. ¶¶ 5-7.

²⁸ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

²⁹ Rickenbach Testimony at 9:183-93 & Exhibit 1.9.

switchboard operator received the message, and was informed that the message could be repeated by pressing any button on the phone.³⁰ In addition, the Company notified US Magnesium of the interruption through seven other means that it has admitted receiving.³¹

34. On January 6, 2017, Roger Swenson and Mike Tucker each received a text message from a phone number that displays on the cell phone as “76127”. (See Exhibit F (R. Swenson Direct Test.) at lines 329-332). A copy of the text message received by Roger Swenson on January 6, 2017 is attached hereto as Exhibit H.

Dominion Energy Response to Paragraph 34: Undisputed. Specifically, the texts stated: “*Questar Gas* has called system capacity and supply reduction interruptions. Please review your email for more details.”³²

35. Roger Swenson did not recognize the text message from “76127” as coming from DEU or its predecessor, Questar Gas. (See Exhibit A (R. Swenson Direct Test.) at lines 176-182 & 329-341).

Dominion Energy Response to Paragraph 35: Undisputed, but irrelevant. As noted in Dominion Energy’s Response to Paragraph 34, the text clearly identified that it was from Dominion Energy’s predecessor and that the Company was calling an interruption. It is irrelevant whether Mr. Swenson recognized the text number.

36. The body of the message received from “76127” stated as follows: “*Questar Gas* has called system capacity and supply reduction interruptions. Please review your email for more details.” (See Exhibit A (R. Swenson Direct Test.) at lines 333-334; Exhibit H (Jan. 16, 2017 text message)).

Dominion Energy Response to Paragraph 36: Undisputed.

37. The text message does not state that it is from DEU or Questar Gas and does not explain what a person who receives the text message is to do in response other than “review your email.” (See Exhibit A (R. Swenson Direct Test.) at lines 329-341; Exhibit H (Jan. 16, 2017 text message)).

³⁰ *Id.*

³¹ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

³² Roger Swenson Testimony at 333-34, Exhibit H (text message) (emphasis added); Motion at xii.

Dominion Energy Response to Paragraph 37: Disputed and unsupported. The text message specifically states that an interruption has been called and refers the individual to the email “for more details.”³³ Mr. Tucker and Mr. Swenson admit to having received the email, which clearly instructs recipients what to do and encouraged customers to call Questar Gas if they had any questions:

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 supplies 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 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 the 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 or your Questar Gas representative with any questions regarding your firm contract limit.³⁴

38. Neither Roger Swenson nor Mike Tucker received emails from Questar or DEU on January 6, 2017. Rather, Mr. Swenson and Mr. Tucker each received an email from an account named “no-reply@ecnalert.com.” (See Exhibit A (R. Swenson Direct Test.) at lines 183-188; Exhibit B (M. Tucker Direct Test.) at lines 69-73. See also January 6, 2017 email from “noreply@ecnalert.com”, US Magnesium Direct Testimony Exhibits 6 & 11, attached hereto as Exhibit C).

³³ *Id.*

³⁴ Rickenbach Testimony, Exhibit 1.6 (emphasis added); see also Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony at 3:63-4:73; Exhibits 6, 11.

Dominion Energy Response to Paragraph 38: Disputed. Both emails sent to Mr. Tucker and Mr. Swenson were sent from the Company's electronic notification system.³⁵ Moreover, as noted in the emails themselves, they clearly state they are from Questar Gas and that Questar Gas had ordered an interruption.³⁶ Also, as noted, Mr. Tucker and Mr. Swenson admit to having received the message that directed them to the email.³⁷ If Mr. Tucker or Mr. Swenson had questions about whether the emails were from the Company, they could have (and should have) called the Company, as the email expressly advises.³⁸ US Magnesium never questioned the source of the emails until its witnesses filed testimony in this matter.³⁹

39. Moreover, the January 6, 2017 email from "no-reply@ecnalert.com" did not clearly direct its recipients to take any particular action. (See Exhibit A (R. Swenson Direct Test.) at 189-204 & 317-328; Exhibit B (M. Tucker Direct Test.) at lines 74-89; Exhibit C (Jan. 6, 2017 email from "noreply@ecnalert.com")).

Dominion Energy Response to Paragraph 39: Disputed, but irrelevant. See Dominion Energy Response to Paragraph 37.

40. Roger Swenson also received a phone call from Bruce Rickenbach on January 6, 2017. Mr. Swenson was driving on January 6, 2017 and had only intermittent cell phone access. Mr. Swenson recalls that Mr. Rickenbach called to check to see if the automated notification system had worked. Mr. Swenson does not recall that he and Mr. Rickenbach called to discuss curtailment issues. (See Exhibit A (R. Swenson Direct Test.) at lines 227-239; Exhibit F (R. Swenson Rebuttal Test.) at lines 251-257).

Dominion Energy Response to Paragraph 40: Disputed. As Mr. Rickenbach stated in his testimony:

In the afternoon of January 6, 2017, I made a courtesy call to Mr. Swenson on his cell phone. He answered and we spoke. I asked if he had received the notice of

³⁵ Rickenbach Testimony at 6:129-8:163 & Exhibit 1.6; Tucker Testimony, at Exhibits 6, 11.

³⁶ *Id.*

³⁷ See Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

³⁸ Rickenbach Testimony, at Exhibit 1.6; Tucker Testimony, at Exhibits 6, 11.

³⁹ Rickenbach Testimony at 7:152-54.

interruption. He indicated that he was traveling, but that he had received the notice. Mr. Swenson briefly spoke of operational procedures that would occur in order to get US Magnesium's usage within firm contractual limits, and that was the extent of the phone call.⁴⁰

In addition, Mr. Swenson and Mr. Tucker admit to having received the interruption notice that was sent via text and voicemail from the Company to mobile phone numbers, as well as the emails sent to their email addresses.⁴¹

41. Mike Tucker did not receive any messages on his cell phone during the daytime on January 6, 2017. For security purposes, Mr. Tucker was not permitted to carry his cell phone at the plant. Mr. Tucker did receive messages on his cell phone later in the day on January 6, 2017 when he returned home at the end of the day. (See Exhibit B (M. Tucker Direct Test.) at lines 60-68).

Dominion Energy Response to Paragraph 41: Disputed, but irrelevant. While Mr. Tucker may not have *read* the message until later, Dominion Energy timely sent the message and Mr. Tucker *received* the message earlier in the day. See Dominion Energy Response to Paragraph 6. In addition, Mr. Tucker admits he receive the messages later in the day on January 6, 2017, but still took no action. It is unclear why US Magnesium believes he would have acted differently had he noticed the messages earlier.

42. Despite its failure to properly notify US Magnesium of the January 6-7, 2017 interruption, DEU seeks to impose penalties on US Magnesium pursuant to DEU Tariff § 3.02 totaling more than \$580,000.00. (See Exhibit A (R. Swenson Direct Test.) at lines 86-108. See also Letter from Questar Gas to US Magnesium, US Magnesium Direct Test. Exhibit 1, attached hereto as Exhibit C).

Dominion Energy Response to Paragraph 42: Disputed in part, but irrelevant. The Company disputes that it did not properly notify US Magnesium of the January 6-7, 2017 interruption for the reasons set forth in this opposition and Dominion's Motion. Dominion

⁴⁰ Rickenbach Testimony at 10:220-11:225.

⁴¹ See Rickenbach Testimony, at 6:129-12:245, Exhibits 1.6, 1.7 & 1.8; Swenson Testimony, at 9: 176-10:204;11:227-239; Tucker Testimony, at 3:63-4:73; Exhibits 6, 11.

Energy agrees that, due to US Magnesium’s failure to reduce its gas usage during that interruption, it has been charged for gas service consistent with Section 3.02 of the Tariff.

ARGUMENT

I. US MAGNESIUM IS NOT ENTITLED TO SUMMARY JUDGMENT, AND ITS MOTION SHOULD BE DENIED.

A. Summary Judgment Standard

Summary judgment is only appropriate “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(a). In reviewing the evidence, “all facts and the reasonable inferences to be made therefrom should be construed in a light favorable to the non-moving party.” *USA Power, LLC v. PacifiCorp*, 2010 UT 31, ¶ 33, 235 P.3d 749 (reversing the grant of summary judgment). In other words, the evidence should not be weighed. The only inquiry is whether a reasonable fact finder, faced with the evidence presented, could return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Here, the Motion does not satisfy this standard. As such, its Motion should be denied.

B. The Motion Is Premised on an Unsupported and Incorrect Interpretation of Section 3.02 of the Tariff.

US Magnesium argues that, because of the magnitude of the penalties that could be imposed on an interruptible customer under Section 3.02, those penalties can only be imposed if the Company has “strictly complied” with numerous obligations under the Tariff, including proving that an interruption notice was successfully received at *every* number and email address provided by each customer.⁴² This argument is not supported by the language of Section 3.02.

Section 3.02 provides that an interruption may be called “*upon notice* by the Company, whenever the Company determines interruption is required to serve firm sales service

⁴² Motion at 2-3.

customers.”⁴³ Section 3.02 further provides that interruptible customers may be interrupted “upon notice by the Company.”⁴⁴ This section imposes no other *obligation* on the Company prior to calling for an interruption, and certainly does not contain a checklist of requirements that must be “strictly” followed before penalties can be imposed on an interruptible customer that fails to heed an interruption notice. Instead, the Tariff simply states that a customer that 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.”⁴⁵

US Magnesium contends that the phrase “when properly called upon by the Company” means more than just providing simple notice. It states that this phrase must be interpreted in light of the contact information Section 3.02 requires the customer to provide. The Company agrees with this proposition to an extent. Certainly, a notification would not constitute “notice” under the Tariff if it were sent to numbers and email addresses that did not belong to the customer. However, US Magnesium goes well beyond just arguing that notice to a customer through one or more means identified by the customer is sufficient. Specifically, it argues that notice is not proper *unless* successfully received by the customer at every contact number or email address provided, regardless of whether the customer actually received notice through one or more of the designated numbers or email addresses. In fact, it argues that notice is only effective if provided to a number or email address the customer subjectively and “reasonably believe[s]” will be used for interruption notices, even if that subjective belief was never shared

⁴³ Tariff § 3.02 (emphasis added).

⁴⁴ *Id.*

⁴⁵ *Id.*

with the Company.⁴⁶ These arguments are unsupported by the express and clear language of the Tariff.

As US Magnesium concedes in its Motion that the plain language of Section 3.02 *does not specify* a particular type of notice that is required to be given by the Company.⁴⁷ And Section 3.02 does not impose any requirement that notice is only deemed effective if every attempt at providing notice to every number or email address provided by the customer is successful. Indeed, such an interpretation would be unreasonable, and should be rejected, as it would excuse an interruptible customer from the obligation to interrupt its usage even if that customer actually received the interruption notice through one or more of the identified notification channels.⁴⁸ As is clear from Section 3.02, a customer that receives notice of an interruption through any of the numbers or email addresses it has provided to the Company is on notice of the interruption and is required to interrupt its usage. It cannot avoid this obligation and cause further harm to the system by relying on a failed telephone call to avoid its interruption obligations while having received notice of the interruption through other means.

Here, it is undisputed that the Company provided an automated notice of the interruption through seven different means (two messages to identified mobile telephone numbers, texts to those telephone numbers, emails to both Mr. Tucker and Mr. Swenson, and a telephone call directly to Mr. Swenson).⁴⁹ In addition, Mr. Rickenbach made a courtesy call directly to Mr.

⁴⁶ Motion at 5.

⁴⁷ *Id.* at ix (Paragraph 19.)

⁴⁸ 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)).

⁴⁹ See Dominion Energy Response to Paragraph 6 above.

Swenson, spoke to him, and confirmed that Mr. Swenson had seen the interruption notices.⁵⁰ Section 3.02 does not require more than this. If this were not the case, the Company would have to hire countless personnel to call each customer and confirm receipt of the interruption notification through every number or email address provided by each customer. With hundreds of customers, this is an unreasonable burden, and one that was never intended by Section 3.02.

Furthermore, US Magnesium's subjective, but unshared, belief about how it would be contacted is irrelevant to the analysis. It contends that, because of the way the Customer Information Sheet is organized, including providing a space for a "Day Phone" contact number, "US Magnesium reasonably believed that if an interruption occurred during daytime hours, that it would receive notice of the interruption" at the "Day Phone" number.⁵¹ But this argument is flawed for at least three reasons.

First, US Magnesium never shared with the Company its subjective belief that it would only be contacted for an interruption during daytime hours through the "Day Phone" numbers, and there is no evidence that it ever informed the Company of this belief. Therefore, the Company had no way of knowing this subjective expectation.

Second, US Magnesium's "belief" is by no means reasonable. US Magnesium did not provide a "Night Phone" number on the Customer Information Sheet, even though that was available, and it did not specify in the Customer Information Sheet or otherwise tell the Company that the email addressees and mobile phone numbers it provided could only be used during certain times of the day or night.

⁵⁰ Rickenbach Aff. ¶ 5; Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-27 & Exhibit 1.9.

⁵¹ Motion at 5.

Third, in the email the Company sent with the Customer Information Sheet, it informed customers that they would be notified of interruptions through the Company's automatic notification system in numerous simultaneous ways using all of the contact information provided: "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."⁵² Thus, US Magnesium was informed that the Company would be using *all* designated numbers and email addresses to send electronic calls, texts, and emails to provide notice simultaneously.

US Magnesium's interpretation of Section 3.02 is unreasonable and is unsupported by the language of the Tariff. When a customer receives notice of an interruption through one or more of the designated numbers or email addresses, as US Magnesium did here, that customer is required to interrupt its usage so as not to cause harm to the system. If it fails or refuses to interrupt after receiving notice, the Tariff requires the penalties to be imposed to deter that behavior in the future.

C. The Company Provided "Notice" Under the Tariff.

US Magnesium's contention that the Company failed to provide "proper notice" under Section 3.02 similarly fails. The undisputed facts demonstrate that, on the morning of January 6, 2017, the Company provided notice of its ordered interruption to US Magnesium through nine different means, each of which was to a number or email address US Magnesium had provided on the Customer Information Sheet for the specific purposes of interruption notices. Dominion Energy left voice messages on Mr. Tucker's and Mr. Swenson's mobile phones, sent text messages to each of those phone numbers, sent email to Mr. Tucker's and Mr. Swenson's email

⁵² Rickenbach Testimony, Exhibit 1.3.

addresses, and called the two work numbers for Mr. Tucker and Mr. Swenson.⁵³ In addition, Mr. Rickenbach specifically called and spoke with Mr. Swenson on his mobile phone to confirm that he had received the interruption notice.⁵⁴ The Company acknowledges that two of the calls to land lines, instead of going to the specified extensions, were routed to US Magnesium's switchboard because of the notification system's inability to dial through to extensions. However, US Magnesium admittedly received the other communications on January 6, 2017 to the other numbers and email addresses designated by US Magnesium. As noted above, that is clearly "notice" to the customer under Section 3.02.

US Magnesium contends that these notices were inadequate for three reasons. First, it claims that, even though US Magnesium identified Mr. Tucker's mobile phone number as an Interruption Contact number on the Customer Information Sheet:

US Magnesium personnel are not permitted to carry or use mobile phones in any area of the plant and, therefore, mobile phone numbers are not a reliable method of contacting US Magnesium of [sic] an interruption during the daytime hours when the plant is in operation. US Magnesium listed mobile phone numbers on the Customers Information Sheet because those numbers are a reliable way of reaching US Magnesium at times other than daytime hours.⁵⁵

This argument ignores the undisputed facts.

US Magnesium never informed Dominion Energy that mobile phones were not allowed in the plant, nor did it inform the Company of Mr. Tucker's or Mr. Swenson's hours at the plant.⁵⁶ For this reason, the Company would have no reason to assume that Mr. Tucker's or Mr. Swenson's mobile phones were not a reliable method of contacting either man, nor would the

⁵³ See Dominion Energy Response to Paragraph 6 above.

⁵⁴ Rickenbach Aff. ¶ 5; Swenson Testimony, at 11:229-33; Rickenbach Testimony, at 10:220-11:221-27 & Exhibit 1.9.

⁵⁵ Motion at 6.

⁵⁶ Rickenbach Affidavit ¶ 4.

Company know specifically when each man would be in the plant area.⁵⁷ Moreover, US Magnesium *did not indicate* on the Customer Information Sheet or otherwise that either man's mobile number should only be used during certain hours or at times other than in the daytime.⁵⁸ Indeed, US Magnesium did not provide any "Night Phone" number on the Customer Information Sheet.⁵⁹ It is undisputed that US Magnesium specifically identified both mobile phone numbers as numbers that could be used for interruption notices, and it is undisputed that the Company sent texts to and left voice messages on both phones notifying US Magnesium of the interruption, and also spoke with Mr. Swenson directly to make sure he saw the interruption notices.⁶⁰ US Magnesium ignored all of these contacts.

Second, US Magnesium argues that the texts and emails sent by the Company "are not relevant to the question of whether DEU properly notified US Magnesium of the interruption" because US Magnesium provided a daytime contact number for interruption notices, and Mr. Tucker and Mr. Swenson did not recognize the numbers or addresses used for the texts or the emails.⁶¹ This argument is defective.

As noted above, the Company informed US Magnesium that, in the event of an interruption, Dominion Energy's automatic notification system would simultaneously place calls and send out texts and emails to any numbers and addresses provided on the Customer Information Sheet.⁶² US Magnesium never told the Company, and the Customer Information Sheet does not say, that notice to provided mobile phone numbers and email addresses would not provide adequate notice. Indeed, if those means were not a reliable method of providing

⁵⁷ *Id.*

⁵⁸ *Id.* at ¶¶ 4-5.

⁵⁹ Rickenbach Testimony, Exhibit 1.1.

⁶⁰ *See* Dominion Energy Response to Paragraph 6 above.

⁶¹ Motion at 9-10.

⁶² *See supra* at 24 & n.52.

interruption notices, then US Magnesium violated its obligation under Section 3.02 to “provide, and update as necessary, contact information that enables the Company to *immediately notify* a customer of a required interruption”⁶³ when it provided mobile telephone numbers and email addresses for its Interruption Contacts on the Customer Information Sheet.

Similarly, US Magnesium’s claim that it did not recognize the text numbers or the email addresses for the text messages and the emails it admittedly received is also unavailing. US Magnesium acknowledges that the texts Mr. Tucker and Mr. Swenson received stated: “Questar Gas has called system capacity and supply reduction interruptions. Please review your email for more details.”⁶⁴ Whether Mr. Tucker and Mr. Swenson recognized the text number or not, they were put on notice that the Company had called an interruption, which, incidentally, had been confirmed to them by their gas marketer.⁶⁵ Moreover, had they gone to their emails, they would have noticed that they each received a full-page email notifying them in very clear terms that the Company had ordered an interruption and that US Magnesium was required to take immediate action.⁶⁶

Finally, US Magnesium makes two illogical assertions: (i) that it had no way of knowing whether the emails or texts they received were legitimate or were a result of “spam or ... phishing,” and (ii) that the email did not tell US Magnesium what it was to do.⁶⁷ Both assertions can be easily dismissed.

Setting aside the fact that it is *extremely unlikely* that spammers or phishers would send out false gas interruption texts or emails, the texts Mr. Tucker and Mr. Swenson received

⁶³ Tariff § 3.02; Motion at 4-7 (emphasis added).

⁶⁴ Motion at 10.

⁶⁵ Rickenbach Testimony, at Exhibit 1.10

⁶⁶ See Dominion Energy Response to Paragraph 37.

⁶⁷ Motion at 10-11.

directed them to the emails, and the emails sent by the Company's notification system specifically told US Magnesium what to do and to contact its marketing agent or the Company with any questions.⁶⁸ US Magnesium never made any confirmation calls, because it did not question the authenticity of the emails. In fact, it never argued that it had concerns about the authenticity of the emails or the texts until it filed its testimony in this case.⁶⁹

Furthermore, the emails provided direct and specific notice to US Magnesium (1) that an interruption had been ordered "for customers with interruptible load"; (2) that, even if it had enough firm capacity to cover its firm contract amount, it was "required to limit [its] usage to not exceed the scheduled quantity being provided to the Questar Gas system . . ."; (3) that US Magnesium's "allowable usage for each hour [would] be equal to the lesser of [its] firm contract amount divided by 24, or [its] scheduled quantity divided by 24, for each hour of the interruption"; (4) that "[i]f necessary," it should "restrict [its] usage as soon as possible, but in no case more than two hours from [the] notice"; and (5) that it would be notified when the interruption had been lifted and to "call your nominating party (Marketing Agent) if you have any questions regarding your scheduled quantity or your Questar Gas representative with any questions regarding your firm contract limit."⁷⁰ Therefore, there is no merit to US Magnesium's claim that the email "did not clearly indicate that US Magnesium was required to reduce its usage."⁷¹

⁶⁸ See Dominion Energy Response to Paragraph 37 above.

⁶⁹ Rickenbach Testimony, at 7:152-53.

⁷⁰ See Dominion Energy Response to Paragraph 37 above.

⁷¹ Motion at 10.

D. The Motion Shows That It Did Not Comply with the Tariff, and It Should Be Required to Pay the Penalties Under the Tariff.

Finally, the undisputed facts show that US Magnesium did not comply with its obligation to interrupt its interruptible usage. US Magnesium acknowledges in its Motion that, upon receiving interruption notices, it is required to interrupt its interruptible gas usage within two hours of the interruption notice.⁷² It also acknowledges that, under Section 3.02, any interruptible customer that fails to interrupt its usage “*will incur* a \$40-per-decatherm penalty for all interruptible volumes utilized during the course of an interruption,” together with other consequences.⁷³ Here, the undisputed facts show that US Magnesium received numerous interruption notices, but did not take any action to reduce its interruptible usage on either January 6 or January 7, 2017. Therefore, there is no basis for US Magnesium to avoid the penalties it has been charged in this matter.

CONCLUSION

For the foregoing reasons, Dominion Energy respectfully requests that the Commission deny US Magnesium’s Motion for Summary Judgment.

DATED: February 14, 2018

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⁷² *Id.* at 3.

⁷³ Motion at 4; Tariff § 3.02 (emphasis added).

CERTIFICATE OF SERVICE

This is to certify that on February 14, 2018 a true and exact copy of the foregoing

DOMINION ENERGY UTAH'S MEMORANDUM IN OPPOSITION TO US

MAGNESIUM'S MOTION FOR SUMMARY JUDGMENT was emailed to the following:

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/s/ Cameron L. Sabin _____