

Gary A. Dodge (0897)
Phillip J. Russell (10445)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdllaw.com
prussell@hjdllaw.com

Attorneys for US Magnesium

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
--	-----------------------------

**US MAGNESIUM, LLC'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Utah Rule of Civil Procedure 56(a) and the January 31, 2018 Order Granting Unopposed Motion to Amend Scheduling Order in this case, US Magnesium, LLC ("US Magnesium") hereby submits this Reply in support of its Motion for Summary Judgment.

INTRODUCTION

The issues in dispute in this Motion are discrete and can be resolved by the Commission based entirely on an interpretation of DEU Tariff § 3.02 and the application of the undisputed facts in this matter. The question before the Commission is as follows: Does DEU Tariff § 3.02 permit DEU to impose approximately \$580,000 in penalties against a customer for that customer's failure to interrupt its gas usage when the customer provided phone numbers for interruption notices during daytime operating hours and DEU failed to notify the customer of the

interruption at those phone numbers because its automated notification system could not dial those phone numbers? The answer to this question should clearly be “no” and US Magnesium’s Motion should be granted.

In its opposition to US Magnesium’s Motion and in its own motion for summary judgment, DEU argues that communication with a customer at any point of contact with that customer is sufficient to satisfy DEU’s obligation to notify the customer of an interruption. This argument should be rejected for several reasons. DEU’s argument attempts to reads out of DEU Tariff § 3.02 the Company’s obligation to provide interruption notices to a customer at the contact information provided by the customer that enables the customer to immediately respond to a notice of interruption. DEU’s argument also seeks to excuse its own errors during the June 6-7, 2017 interruption, including its failure to notify US Magnesium of the interruption, its failure to utilize an automated notification system that has the ability to dial phone numbers with extensions, and/or its failure to inform US Magnesium that its notification system is unable to dial phone numbers with extensions.

US Magnesium’s Motion should be granted and DEU’s motion should be denied, and this Commission should enter an order finding that under the facts in this matter DEU cannot impose penalties against US Magnesium pursuant to DEU Tariff § 3.02.

ARGUMENT

A. **DEU Failed To Properly Notify US Magnesium Of The June 6-7, 2017 Interruption When Its Automated Notification System Failed To Dial Through To US Magnesium’s Day Phone Interruption Contact Phone Numbers.**

DEU is precluded from imposing penalties pursuant to DEU Tariff § 3.02 in this matter because proper notification of an interruption is a pre-requisite to imposing such penalties and DEU failed to properly notify US Magnesium of the June 6-7, 2017 interruption. As set forth in US Magnesium’s memorandum opposing DEU’s Motion for Summary Judgment, DEU Tariff § 3.02 requires each customer “to provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption,” and requires DEU to utilize that interruption contact information to provide proper notice of an interruption to the customer.¹ To comply with this obligation, US Magnesium submitted a Customer Information Sheet to DEU, which included a section titled “Interruption Contacts,” which set forth the contact information that DEU was to use to notify US Magnesium in the event of an interruption.² The “Interruption Contacts” portion of the Customer Information Sheet states as follows:

<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

It is undisputed that US Magnesium’s Customer Information Sheet listed phone numbers with extensions under the header “Day Phone” and also listed other “Mobile Phone” numbers. It is also undisputed that the January 6-7, 2017 interruption began during daytime operating hours

¹ US Magnesium Mem. Opp. DEU Motion at 14-17.

² See R. Swenson Direct Test. at lines 123-153. See also Customer Information Sheet (US Magnesium Direct Testimony Exhibit 4).

and that DEU attempted to notify customer about the interruption during daytime operating hours on January 6, 2017. It is further undisputed that DEU utilized a new automated notification system for the interruption that was incapable of dialing through to phone numbers with extensions, such as the phone numbers listed as the “Day Phone” interruption contacts on the US Magnesium Customer Information Sheet.

It is further undisputed that DEU failed to notify US Magnesium that its automated notification system was incapable of dialing phone numbers with extensions. This fact is significant. As an initial matter, DEU provided the Customer Information Sheet to US Magnesium on November 29, 2017 with the “Day Phone” contact information filled out,³ *including the phone numbers with extensions that its own automated system could not dial*. DEU should have informed US Magnesium at that time that its automated system could not dial the phone numbers listed as Day Phone interruption contacts and asked US Magnesium to provide interruption contact day phone numbers that did not have extensions. DEU failed to take this step. DEU again failed to notify US Magnesium of the limitations in the DEU automated notification system when US Magnesium returned the signed Customer Information Sheet on December 12, 2016, which continued to include the Day Phone interruption contact numbers with extensions. When it received the Customer Information Sheet from US Magnesium, DEU should have reviewed the interruption contact phone numbers to make sure its automated system could actually dial through to those numbers and, if it could not, should have notified its customers of this limitation. DEU failed take this step. DEU failed to take these steps despite the fact that the new automated system could not dial phone numbers with extensions and despite

³ See Nov. 29, 2016 email from Bruce Rickenbach (US Magnesium Direct Testimony Ex. 3).

the fact that DEU had previously utilized automated notification systems that could not dial through to phone numbers with extensions.

As a result of DEU's failure to either utilize an automated notification system that could dial phone numbers with extensions or to notify US Magnesium that its automated notification system could not dial through to extensions, US Magnesium did not receive notice of the January 6-7, 2017 interruption at the Day Phone interruption contact identified by US Magnesium as the contact information that enables DEU "to immediately notify a customer of a required interruption" pursuant to DEU Tariff § 3.02. As a result of DEU's failure to notify US Magnesium of the January 6-7, 2017 interruption by calling the Day Phone interruption contact phone numbers on US Magnesium's Customer Information Sheet, DEU failed to "properly notify" US Magnesium of the interruption and is precluded from imposing penalties against US Magnesium under DEU Tariff § 3.02.

B. DEU Did Not Properly Notify US Magnesium Of The Interruption When Its Automated Notification System Attempted To Provide Notice At The General Contact Information On US Magnesium's Customer Information Sheet.

The Commission should reject DEU's argument that DEU satisfies its obligation to "properly notify" a customer of an interruption by providing notice to *any* contact information it has on file for a customer, rather than by providing notice to the "contact information that enables the Company to immediately notify a customer of a required interruption," as set forth in DEU Tariff § 3.02. In addition to "contact information that enables the Company to immediately notify a customer of a required interruption," which US Magnesium listed in the Interruption Contacts portion of the Customer Information Sheet, the Customer Information Sheet also lists

general contact information for US Magnesium.⁴ Some of this general contact information is also listed in the “Interruption Contacts” portion of the Customer Information Sheet, but some is not, demonstrating that only the customer information “Interruption Contacts” portion are intended to be used for interruption contacts. For example, the general contact information lists email addresses that are not listed in the “Interruption Contacts” portion of the Customer Information Sheet. The emails sent to the email addresses listed in the general contacts portion of the Customer Information Sheet do not constitute “proper notice” of an interruption.

In addition, for the reasons set forth in US Magnesium’s Motion and opposition to DEU’s motion in this docket, the emails that DEU claims constitute notice of the interruption were sent from an unknown user (“no-reply@ecnalerts.com”) and provide confusing instructions regarding how the customer is to respond to the email.

C. DEU Did Not Properly Notify US Magnesium Of The Interruption When Its Automated Notification System Left Messages On Mobile Phones.

The Commission should also reject DEU’s claim that messages left on the phone numbers listed under the header “Mobile Phone” in the “Interruption Contacts” portion of US Magnesium’s Customer Information Sheet are sufficient to provide “proper notice” of the January 6-7, 2017 interruption. As US Magnesium has explained in other filings in this docket, US Magnesium personnel are not permitted to carry cell phones at the plant for security reasons. For interruptions during daytime operating hours, US Magnesium relied on receiving phone calls at the land lines with extensions set forth in the “Day Phone” portion of the “Interruption Contacts.” That is, US Magnesium complied with its obligation under DEU Tariff § 3.02 to provide contact information “that enables the Company to immediately notify a customer of a

⁴ See Customer Information Sheet (US Magnesium Direct Testimony Exhibit 4).

required interruption” by providing Day Phone contact information for interruptions that occur during daytime operating hours. To receive notices of interruptions at times other than daytime operating hours, US Magnesium listed Mike Tucker’s and Roger Swenson’s Mobile Phone numbers as “Interruption Contacts” on the Customer Information Sheet.

DEU’s argument that US Magnesium failed to notify DEU of this expectation is nonsensical and ignores the plain language of the Customer Information Sheet and DEU’s own failures in this matter. As set forth above, the Customer Information Sheet contains a section labeled “Day Phone” under the header “Interruption Contacts.” Any reasonable customer would understand that the phone numbers placed under the “Day Phone” header were the phone numbers at which DEU would seek to notify the customer of an interruption during daytime hours. US Magnesium has provided testimony that it had this understanding.⁵ US Magnesium has also testified that if it had been informed that DEU could not dial through to those “Day Phone” interruption contact numbers that it would have found a solution that would have worked with DEU’s automated notification system.⁶ US Magnesium reasonably expected to receive notice of the January 6-7, 2017 interruption during daytime operating hours at the “Day Phone” interruption contact information set forth in the Customer Information Sheet. DEU is entirely responsible for the fact that US Magnesium did not receive notice at those listed numbers and cannot now impose penalties against US Magnesium pursuant to DEU Tariff § 3.02 as a result of its own failure to provide proper notice of the interruption.

⁵ See R. Swenson Direct Test. at lines 214-219, 240-257; R. Swenson Rebuttal Test. at lines 97-103.

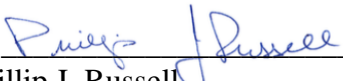
⁶ See M. Tucker Direct Test. at lines 96-106; R. Swenson Direct Test. at lines 220-226.

CONCLUSION

For the foregoing reasons, US Magnesium respectfully requests that the Commission enter an order granting US Magnesium's Motion for Summary Judgment and ruling that DEU may not impose penalties against US Magnesium pursuant to DEU § 3.02 related to US Magnesium's use of gas during the January 6-7, 2017 interruption.

DATED this 23rd day of February 2018.

HATCH, JAMES & DODGE

/s/ 
Phillip J. Russell
Attorneys for US Magnesium

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 23rd day of February 2018 on the following:

DOMINION ENERGY UTAH


Jenniffer Clark jenniffer.clark@dominionenergy.com
Cameron Sabin cameron.sabin@stoel.com

DIVISION OF PUBLIC UTILITIES

Chris Parker chrisparker@utah.gov
William Powell wpowell@utah.gov
Patricia Schmid pschmid@agutah.gov
Justin Jetter jjetter@agutah.gov
Erika Tedder etedder@utah.gov

OFFICE OF CONSUMER SERVICES

Michele Beck mbeck@utah.gov
Cheryl Murray cmurray@utah.gov
Steven Snarr stevensnarr@agutah.gov
Robert Moore rmoore@agutah.gov



Phillip J. Russell
Attorneys for US Magnesium