

ELECTRIC SERVICE AGREEMENT
BETWEEN
PACIFICORP
AND
US MAGNESIUM LLC.

THIS ELECTRIC SERVICE AGREEMENT, ~~made this~~ effective the 1st day of ~~_____~~, 2003 January, 2004 is by and between PacificCorp, an Oregon corporation (hereinafter referred to as the “Seller”) and US Magnesium LLC (hereinafter “Purchaser”), a Delaware corporation having a place of business within the State of Utah and located within the county of Tooele. Seller and Purchaser are sometimes referred to separately as a “Party” and collectively as “Parties”.

WITNESSETH:

WHEREAS, the ~~Commission has by order (“Order”) dated May 24, 2002 in Docket No. 01-035-38 directed Seller and Magnesium Corporation of America~~ Parties desire to submit an enter into a long term agreement for interruptible service to the Facility, facility as defined herein, ~~to the Commission for approval; and.~~

~~WHEREAS, Purchaser has purchased, effective June 25, 2002, the Facility from Magnesium Corporation of America.~~

NOW THEREFORE, the Parties agree as follows:

Article I. DEFINITIONS

“**Adjusted Index Price**” means the Index Price for a given Day times the applicable hourly shaping factor set forth in **Exhibit A** for each Curtailment Hour. An example showing the calculation of the Adjusted Index Price for certain Curtailment Hours under certain stated assumptions is set forth as **Exhibit B**. By notice given to Purchaser on or before December 1 of each year during the Term, Seller shall have the right to adjust the hourly shaping factors set forth in **Exhibit A** in a commercially reasonable manner, with such adjustment to be in effect

from January 1 through December 31 of the following Year. Such adjustment shall be subject to Purchaser's consent, which Purchaser shall not unreasonably withhold, condition or delay.

"Agreement" means this Electric Service Agreement and the attached Exhibits, which are incorporated by reference.

"Billing Period" means the period of approximately thirty (30) days intervening between regular successive meter reading dates.

"Business Day" means any Day except Saturday, Sunday, Days that are observed as business holidays by either Party and Days that are authorized as holidays by banks in New York, New York.

"Commission" means the Utah Public Service Commission.

"Commodity Charge" means \$21.00 per MWh.

"Curtailed Capacity" means the Demand available for curtailment under this Agreement. For recordkeeping purposes, Curtailment Capacity will be measured at the time of Seller's Curtailment Notice. This definition and measurement will not limit the amount of Replacement Power that Purchaser may purchase at Replacement Power Charges during any Curtailment Hours.

"Curtailed Day" means any non-holiday Day, Monday through Friday of ~~each the~~ Curtailment ~~Month during the Term.~~ Months of June, July, August and September in which a nationally-recognized weather service forecasted as of the previous evening that the high temperature to be recorded at the Salt Lake City, Utah airport will be higher than the mean historic high temperature recorded at the Salt Lake City, Utah airport for the past 30 years of data observations for the relevant month. "Curtailed Day" also means any non-holiday Day, Monday through Friday of the Curtailment Months of January and December.

"Curtailed Hours" means the ~~six (6)~~ four (4) consecutive hours chosen by the Seller pursuant to the provisions of Article IV during each Curtailment Period during each Curtailment Day.

"Curtailed Month(s)" means the months, as set forth in **Exhibit C**, during which the Facility's electric load may be curtailed as specified in Article IV.

"Curtailed Period" means the hours from 1:00 PM to 9:00 PM (8 hours) Mountain prevailing time (MPT) for each Curtailment Day during the Term.

“**Day**” means a calendar day.

“**Delivered Power**” means the capacity and associated electric energy delivered by Seller to Purchaser as shown by the meters located at the Point of Metering for all Non-Curtailment Hours.

“**Delivered Power Charges**” means charges for Delivered Power calculated in accordance with Section 3.3.

“**Demand**” means the rate in kilowatts at which Seller delivers electricity to Purchaser as shown by the meters located at the Point of Metering. Demand measurements are calculated based on the average (integrated) usage over fifteen (15) minute periods of time, starting at 00, 15, 30 and 45 minutes past each hour. Abnormally high demands established as a result of extraordinary conditions existing on the Seller’s interconnected system or as a result of accidents caused by the Seller’s negligence resulting in temporary separation of the Parties’ systems shall be excluded from the determination of demand.

“**Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” means ~~June 25, 2002~~January 1, 2005.

“**Facility**” means Purchaser’s magnesium production and related facilities located within Tooele County in the State of Utah, which consist of Purchaser’s Rowley facilities, excluding facilities owned by Desert Power.

“**Force Majeure**” means any act or event that delays or prevents Seller or Purchaser from timely performing its obligations under this Agreement or from complying with this Agreement if such act or event is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including, without limitation, (a) an act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of Purchaser or Seller (whether such cause is similar or dissimilar to the foregoing or is foreseen, unforeseen, or foreseeable), or (b) any restraint or restriction imposed by law or by rule, regulation, or other acts of governmental authorities, whether federal, state or local, not initiated or supported by the Party claiming the event of Force Majeure. “Force Majeure” does not include changes in economic or market conditions that affect

the cost of fuel or fuel transportation, the cost of transmission, the demand for products manufactured by Purchaser or the price of energy (including Purchaser's ability to buy energy at a lower price or Seller's ability to sell energy at a higher price than the Adjusted Index Price established pursuant to this Agreement), or that otherwise render this Agreement uneconomic or unprofitable for a Party.

“**Index Price**” means the price for a given Day as specified in the Dow Jones TM Palo Verde Firm, On Peak Price index as reported at www.dowjones.com (or a successor site) each Monday through Friday. For reference, the Dow Jones description of the “Dow Jones TM Palo Verde Firm, On Peak Price” index is attached as **Exhibit D**; *provided, however*, that if the “Dow Jones TM Palo Verde Firm, On Peak Price” index is not reported for any Day during the Term, the “Dow Jones TM Palo Verde Firm, On Peak Price” index for the most recent preceding comparable Day (*i.e.*, Saturday to Saturday, weekday to weekday) shall be used to set the Index Price for the Day on which “Dow Jones TM Palo Verde Firm, On Peak Price” index is not reported. If the “Dow Jones TM Palo Verde Firm, On Peak Price” index or any replacement of that index ceases to be published during the Term, Seller shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. Seller's selection shall be subject to Purchaser's consent, which Purchaser shall not unreasonably withhold, condition or delay.

“**Interruptible Contract Demand**” means the maximum amount of Demand that Seller is obligated to provide to Purchaser at any time. The Interruptible Contract Demand during the Term is 120 MW.

“**Interruptible Power and Energy**” means the electric power and energy supplied to purchaser hereunder which is subject to curtailment at the Seller's option under the conditions set forth in this Agreement.

“**kW**” means kilowatt.

“**Measured Energy**” for any period means the algebraic sum of the electric energy in kilowatt-hours as shown by or computed from the readings of the existing kilowatt-hour meters located at the Point of Metering and adjusted for: (i) losses, if any, between the Point of Metering and the Point of Delivery and, (ii) Power Factor adjustment as set forth in Section 4.4.

“**Month**” means a calendar month.

“**MW**” means megawatt, or 1,000 kW.

“**MWh(s)**” means megawatt-hour(s).

“**Non-Curtailment Hour(s)**” means any hour that is not a Curtailment Hour.

“**Operating Reserve Interruption**” means a physical interruption of Interruptible Power and Energy to the Facility in order to maintain operating reserve requirements in accordance with the provisions of Section 4.2.

“**Party**” and “**Parties**” have the meanings given in the preamble of this Agreement.

“**Payment Default**” means any failure by Parties to make payment, including prepayments and deposits, on or before the date due under the terms of this Agreement.

“**Person**” means any individual or a corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or any agency or political subdivision thereof) or other entity of any kind.

“**Physical Curtailment**” means Purchaser stopping or reducing electric power purchases from Seller.

“**Point of Delivery**” means the 138 kV side of the 138 to 13.8 kV transformers at the Rowley Substation located in Tooele County, Utah.

“**Point of Metering**” means the 13.8 kV side of the Rowley Substation located in Tooele County, Utah.

“**Power Factor**” means the percentage determined by dividing Purchaser’s average kilowatt-hours by Purchaser’s average kilovolt-ampere hours in any given month.

“**Power Purchase Agreement**” means the agreement ~~dated May 16, 2002~~effective January 1, 2005, between Seller and Purchaser for the purchase of power by Seller from Purchaser's qualifying facility.

“**Prudent Utility Practices**” means, at a particular time, those practices, methods and equipment, as changed from time to time, that are commonly used in engineering and operations to operate electric equipment lawfully and safely and that are in accordance with the applicable standards promulgated by a regulatory or standard-setting body including, but not limited to, the National Electrical Safety Code and the National Electric Code in effect during the term of this Agreement.

“**Commission Approval**” means the approval of the Agreement by the Utah Public Service Commission.

“**Purchaser**” has the meaning given to it in the preamble of this Agreement.

“**Purchaser’s Curtailment Response**” means a response to a Seller’s Curtailment Notice provided by Purchaser to Seller in accordance with Section 5.2.

“**Replacement Power**” means the Measured Energy for any Curtailment Hour.

“**Replacement Power Charges**” means the charges for Replacement Power calculated in accordance with Section 5.3.

“**Seller**” has the meaning given to it in the preamble of this Agreement.

“**Seller’s Curtailment Notice**” means notice of curtailment provided to Purchaser by Seller in accordance with Section 4.2.

“**Term**” has the meaning given to it in Section 2.1 of this Agreement.

“**Year**” means a calendar year during the Term of this Agreement.

Article II. TERM AND TERMINATION

2.1 **Term.** The “Term” of this Agreement shall begin at 0000 hours Mountain prevailing time on the Effective Date and shall terminate at 2400 hours Mountain prevailing time on December 31, ~~2004~~2009.

~~2.2 **Agreement Reopener.** This Agreement is subject to prospective modification by the Commission as specified in the Order.~~

Article III. RATES, BILLING, PAYMENTS AND ADJUSTMENTS

3.1 Seller shall sell and deliver and Purchaser shall purchase and receive Interruptible Power and Energy under the terms and at the rates specified herein.

3.2 **Monthly Billing.** The monthly billing hereunder shall be the sum of the monthly Delivered Power Charges, as determined pursuant to the provisions of Section 3.3, and the monthly Replacement Power Charges, as determined pursuant to the provisions of Section 5.3.

3.3 **Delivered Power Charges.** Delivered Power Charges shall be calculated as follows:

Commodity Charge multiplied by Measured Energy for all Non-Curtailment Hours.

3.4 **Power Factor.** The rates contained in this Agreement are based on Purchaser maintaining at all times a Power Factor of not less than 90% lagging at the Rowley Plant site as determined by the simultaneous measurement of the meters at the Point of Metering. If the average Power Factor during any Month is found to be less than 90% lagging, the Measured Energy during such Month will be increased by 3/4 of 1% for every 1%, or portion thereof, that the Power Factor is less than 90%.

3.5. **Billing Statements.** All billing statements shall show the amounts due for Delivered Power Charges, Replacement Power Charges and any other charges authorized under this Agreement or under Electric Service Schedule 300. Each monthly bill shall be transmitted to Purchaser by facsimile at 801-534-1407.

3.6 **Payment.** Purchaser will pay to Seller by wire transfer on the first and fifteenth of each month amounts which represent approximately fifty (50%) percent of the estimated monthly amount due for electric service hereunder. During Curtailment Months, the prepayment amounts will be ~~\$602,448,500,000~~, which is fifty percent of the estimated monthly amount due based on an estimated monthly Demand of ~~8095~~ MW and an estimated Adjusted Index Price of ~~\$5865~~ per MWh; and net of QF payments. During all other Months, the prepayment amount will be ~~\$388,080350,000~~, which is fifty percent of the estimated monthly amount due based on an estimated monthly Demand of ~~8095~~ MW and a price of \$21 per MW. The prepayment amount due on the fifteenth of each Month will be increased or decreased, as applicable, to reflect the estimated increase or decrease in the Demand and/or Adjusted Index Price for that Month. Promptly after the end of each month, Seller will invoice Purchaser for the amount due under this Agreement for actual usage. Purchaser and Seller will true-up the bimonthly payments to the actual amounts due by either a wire transfer from Purchaser to Seller of the shortfall within three (3) business days after transmission to Purchaser by facsimile of the true-up billing if such amount due is greater than \$50,000, otherwise any remaining amount due or any overage shall be

due or credited with the next bimonthly payment. The prepayment amounts may be adjusted to reflect changes in Purchaser's usage level.

3.7 **Payment Default and Disputes.** In the event of a Payment Default, after the date on which this Agreement is entered, as to an amount which is not or cannot in good faith be disputed Seller will provide written notice of the default by facsimile at (801) 534-1407. If payment in the amount of the defaulted payment is not made within ~~three (3) Business~~fifteen (15) Days after transmission to Purchaser by facsimile of the default notice, Seller may, without further notice, terminate electric service to Purchaser and apply the Deposit to Purchaser's unpaid charges. In the event that a portion of the bill or adjustment arising hereunder is disputed, payment of the portion not in dispute shall be made when due. Purchaser and Seller shall seek to resolve any disputed amount within thirty (30) days after issuance of Purchaser's notice of dispute by reviewing all pertinent billing data defined in this Agreement. Should the parties be unable to resolve any such dispute, ~~they shall~~either Party may present it to the Commission for resolution.

3.8 **Rights and Remedies.** In the event either Party defaults in any of its obligations under this Agreement or the applicable Electric Service Regulations, either Party may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations, and under any applicable laws, rules and regulations.

3.9 **Set Off.** Seller may offset any amounts it owes Purchaser under the Power Purchase Agreement with any amounts that are owed to it by Purchaser under this Agreement. If Seller and Purchaser disagree on the amount due under this Agreement, or the Power Purchase Agreement, the lower of the amounts due asserted by each Party shall be so netted. After resolution of the disagreement, the balance (if any) shall be netted with the next payment, if any, due to either Party, or shall be paid in full within three (3) Days by the owing Party to the other.

3.10 **Deposit.** Seller currently has a deposit ("Deposit") from Purchaser in the amount of \$575,000. ~~On or before the date of execution of this Agreement, the Deposit will be increased \$90,000 and paid by Purchaser, for a total Deposit of \$665,000.~~665,000. Such deposit will be reduced by \$431,000 and that amount shall be applied by PacifiCorp against the outstanding amount due for service to Purchaser as of December 31, 2004. The remaining \$234,000 shall continue to be held by Seller as a deposit. Purchaser shall increase the deposit to \$411,000

through credits or payments of \$50,000 in each of January and February 2005 and a payment of \$77,000 in March 2005. At any time, Purchaser may substitute a Letter of Credit reasonably acceptable to Seller for all or any portion of the \$411,000 deposit, in which case Seller shall refund the portion of the deposit covered by the Letter of Credit by wire transfer to Purchaser on the day that the Letter of Credit becomes effective.

Article IV. CURTAILMENT

4.1 Seller shall have the right at its sole and complete discretion to curtail Interruptible Power and Energy to the Facility for up to ~~six (6)~~four (4) Curtailment Hours in each Curtailment Day in accordance with this Article IV.

4.2 Seller may also temporarily physically interrupt or curtail service to Purchaser's Facility when Seller reasonably determines, pursuant to Prudent Utility Practice, that an interruption or curtailment of Interruptible Power and Energy to Purchaser is necessary to maintain service to other non-interruptible retail customers, ~~not including Purchaser, receiving retail service from Seller. Except under emergency conditions, Seller shall give Purchaser at least two hours advance notice of desired interruption and/or curtailment and at least one hour's notice when interruption and/or curtailment are to be discontinued.~~ or to maintain operating reserve requirements. Upon receipt of notice of an Operating Reserve Interruption, within ten (10) minutes Purchaser shall reduce its usage to the level and for the time specified by Seller for up to sixty (60) minutes. Operating Reserve Interruptions may not occur more than three (3) times per day, nor for more than (3) three hours in any four (4) hour period, nor for more than one hundred (100) hours in a Year. Operating Reserve Interruptions shall be subject to applicable rules, requirements and conditions of the Western Energy Coordinating Council. Except under emergency conditions, Seller shall give Purchaser at least ten (10) minutes' advance notice of desired interruption and/or curtailment under this Section 4.2 and at least ten (10) minutes' notice when interruption and/or curtailment is to be discontinued. If an interruption or curtailment under this Section 4.2 occurs during Curtailment Hours, the hours of curtailment or interruption under this Section will reduce the Curtailment Hours otherwise available during the same Curtailment Day. Purchaser shall have a right to audit Seller's records to evaluate the need for system emergency or Operating Reserve Interruptions.

4.3 **Seller's Curtailment Notice.** Seller shall provide notice of curtailment under Section 4.1 to Purchaser by facsimile to 801-534-1407 no later than two (2) hours in advance of any Curtailment Hour that Seller elects for curtailment. Seller's Curtailment Notice shall specify the Curtailment Hour(s) for that Curtailment Day.

Article V. REPLACEMENT POWER

5.1 **Option to Accept Replacement Power.** If Seller provides Seller's Curtailment Notice under Article IV, Purchaser may elect either to accept Physical Curtailment or to purchase Replacement Power for all or any portion of the Curtailment Capacity during any or all of the Curtailment Hour(s) specified in Seller's Curtailment Notice by giving notice in accordance with Section 5.2 or Section 5.4.

5.2 **Purchaser's Curtailment Response.** Purchaser shall notify Seller by facsimile to 503-813-6265 of its decision to accept Physical Curtailment or to purchase Replacement Power for all or any portion of the Curtailment Capacity within one (1) hour after Seller provides Seller's Curtailment Notice. *For example, if Seller provides Seller's Curtailment Notice to Purchaser by 11AM MPT, Purchaser must provide Purchaser's Curtailment Response to Seller by 12PM MPT.* Purchaser's Curtailment Response shall specify the portion of the Curtailment Capacity for each Curtailment Hour for which Purchaser elects to buy Replacement Power and the portion that is subject to Physical Curtailment.

5.3 Replacement Power Charges for each Curtailment Hour shall be calculated as follows:

Adjusted Index Price multiplied by Replacement Power.

Monthly Replacement Power Charges shall equal the sum of hourly Replacement Power Charges for that Curtailment Month.

5.4 **Failure to Provide Purchaser's Curtailment Response.** If Purchaser fails to provide Purchaser's Curtailment Response within the one (1) hour period specified in Section 5.2, Purchaser will be deemed to have elected to purchase Replacement Power for its entire Curtailment Capacity for all Curtailment Hours specified in Seller's Curtailment Notice.

Article VI. OPERATIONS AND MAINTENANCE

6.1 Cooperation in Operation

6.1.1 No later than ten Days prior to the beginning of each calendar quarter, Purchaser shall provide Seller with a written estimate of its anticipated demand and energy usage during each calendar quarter of the following 12-month period. Such estimates shall not be binding on either party.

6.1.2 Purchaser shall make reasonable commercial efforts to notify the Seller in advance regarding changes in conditions that are reasonably expected to affect Purchaser's load that may aid Seller in load dispatching and in planning Seller's power system operation, such as the probable schedule and duration of substantial daily load changes. Following an unexpected outage, Purchaser shall notify Seller's dispatcher as quickly as possible of the expected duration of such outage. Such estimates or advance information shall not be binding on either party.

Article VII. METERING

7.1 Purchaser shall be metered with existing profile metering equipment. Such metering equipment has been installed such that both power and energy provided by Seller can be measured during time intervals of not more than fifteen (15) minutes. Purchaser has provided at the identified metering point(s) at the Rowley plant site, telephone lines so that the meters can report their measurements to Seller, or so that the meter(s) can be interrogated by Seller. Purchaser has provided dedicated telephone line(s) where necessary. Purchaser shall pay all charges related to the operation and maintenance of such telephone lines.

7.2 Seller has provided and installed suitable metering equipment, including panels, to obtain measurements needed for its operating purposes and in connection with settlements hereunder. The metering equipment is installed in Purchaser's substations made available by Purchaser without charge. The metering equipment including panels, the location of the substations, and the installation have been approved by Purchaser and any changes contemplated to said metering equipment shall require Purchaser's prior approval, which will not be unreasonably withheld.

7.3 Seller shall provide, maintain, and test meters and metering equipment required for purposes of settlement hereunder except any potential transformer and current transformers owned by Purchaser. Seller shall maintain and periodically test such meters and metering

equipment in accordance with generally accepted practices and in accordance with its Electric Service Regulations. Upon reasonable request by Seller, Purchaser will allow Seller's designated agents access to such metering equipment at all reasonable times and shall permit Seller to install and operate from time to time any testing equipment needed in conjunction with operations or settlements hereunder. In exercise of the rights granted by this Section, Seller shall not interfere with the operation of Purchaser and shall schedule any activity to minimize any interference with Purchaser operations.

7.4 If, at any test of any meter or metering equipment, an inaccuracy is disclosed exceeding two percent, the account for service therefore supplied shall be adjusted to correct the inaccuracy from the last periodic test to the date of such test or for the period during which such inaccuracy may be determined to have existed, whichever period is shorter. Under no circumstance shall adjustments be made for inaccuracies occurring during time periods more than six months prior to the date of such test. Should any meter at any time fail to register, or should registration be so erratic as to be meaningless, the quantities shall be determined from check meters, if installed, or otherwise from the best data available.

Article VIII ASSIGNMENT

8.1 **Permitted Assignment by Seller.** Purchaser may assign its rights and obligations under this Agreement to any Person who purchases the Facility and assumes in writing the Purchaser's obligations under this Agreement.

8.2 **Restriction on Assignment.** Other than as specified in Section 8.1, neither Party may assign this Agreement without the other Party's prior written consent, which the other Party shall not unreasonably withhold, condition or delay. A Party may reasonably withhold its consent to such an assignment if the assigning Party proposes to assign its rights or delegate its duties under this Agreement in part, or to any party that is in bankruptcy or otherwise has an inability to perform this Agreement in accordance with its terms. If a Party wishes to assign or delegate its rights or obligations under this Agreement, it shall provide the other Party with reasonably detailed information concerning the proposed assignee so as to enable the other Party to make the determination contemplated by the preceding sentence. Any assignment in violation of this Section 8.2 shall be void. Notwithstanding the foregoing, either Party may assign this Agreement

without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

8.3 **Assumption of Liabilities.** Any permitted assignee or transferee of a Party's interest in this Agreement must assume in writing all existing and future obligations of the assigning Party to be performed under this Agreement, in which case the assignor is released from such obligations.

Article IX RESALE OF POWER

Electric power purchased by Purchaser hereunder shall not be re-sold but shall be used solely by Purchaser.

Article X. REMEDIES; WAIVER

Either party may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations and under any other applicable laws, rules and regulations affecting this single customer class. No provision of this Agreement or the Electric Service Regulations shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. No failure by any party to insist upon the strict performance of any provision of this Agreement, the Electric Service Regulations or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement, or the Electric Service Regulations shall be deemed a waiver of any other provision of this Agreement, the Electric Service Regulations or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

Article XI. GOVERNING LAW; JURISDICTION; VENUE

11.1 All provisions of this Agreement and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Utah applicable to contracts executed in and to be wholly performed in Utah by persons domiciled in the State of Utah. Each party hereto agrees that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the

Electric Service Regulations or the transactions contemplated hereby or thereby, may only be brought before the Commission, the Federal courts located within the State of Utah, or state courts of the State of Utah, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts there from) in any such suit, action or proceeding.

11.2 If either Party is served with any subpoena or any other judicial or administrative process calling for the production of the terms, conditions, or rates of this Agreement, that Party shall immediately notify the other Party in order that the other Party may take such action as it deems necessary to protect its interest.

Article XII. JURISDICTION OF REGULATORY AUTHORITIES;

12.1 This Agreement is subject to the approval of the Commission.

12.2 The applicable Electric Service Regulations of Seller, together with all changes and amendments thereto as approved by the Commission, are incorporated herein and made a part of the agreement. Once the Commission approves the Agreement, the provisions of the Agreement shall take precedence over any conflicting provisions of Seller's Electric Service Regulations. A copy of Seller's current Electric Service Regulations is attached hereto as Attachment E.

Article XIII. REPRESENTATIVES AND NOTICES

Except to the extent the Agreement specifies another method of delivery or notice, a notice or notification required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been validly served, given or delivered (i) five (5) Business Days following deposit in the United States mail, with proper first class postage prepaid, (ii) the next Business Day after such notice was delivered to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) upon receipt of notice given by facsimile or personal delivery, so long as a copy is also sent contemporaneously by first class United States mail, postage prepaid:

If to Seller: Sr. Vice President, Commercial & Trading
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

With a copy to:

Director, Contract Administration
PacifiCorp
825 NE Multnomah, Suite 600
Portland, OR 97232
Fax: 503-813-6291

If to Purchaser: Lee R. Brown
Vice President
US Magnesium LLC.
238 North 2200 West
Salt Lake City, Utah 84116
Fax: 801-534-1407

Article XIV. GENERAL PROVISIONS

14.1 **Severability.** The invalidity, in whole or in part, of any of the articles, sections or paragraphs of this Agreement shall not affect the validity of the remainder of such articles, sections or paragraphs; *provided, however,* that the Parties shall promptly negotiate in good faith to amend this Agreement to preserve the benefits and burdens contemplated by this Agreement.

14.2 **Amendment.** No modification, amendment, or other change to this Agreement will be effective unless consented to in writing by each of the Parties.

14.3 **Effect of Force Majeure.** Except for the obligation to make any payments that are due and payable, Purchaser or Seller, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance under this Agreement is prevented by an act or event of Force Majeure. Purchaser or Seller, as the case may be, shall use its commercially reasonable efforts to overcome or mitigate the effects of such an act or event of Force Majeure; *provided, however,* that nothing in this Agreement shall be deemed to obligate the Party affected by an act or event of Force Majeure to forestall or settle any strike, lock-out or other labor dispute against its will.

14.4 **Interest on Amounts Due.** Any amounts owing after the due date thereof shall bear interest at the Rate specified in the Electric Service Regulations (currently one percent (1%)).

14.5 **No Third Party Beneficiaries.** Except for Persons to whom this Agreement is assigned in compliance with Article IX, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.

14.6 **Time.** Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Mountain standard or Mountain daylight savings time, whichever is then prevailing.

14.7 **Headings.** The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions.

14.8 **Interpretation.** Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context requires. Whenever the words include(s) or including are used in this Agreement, they should be interpreted to mean include(s) or including, but not limited to. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply. This Agreement shall be governed by the internal laws of the State of Utah.

14.9 **Compliance with Law.** The parties shall in the performance of this Agreement comply with all laws, executive orders, regulations, ordinances, rules, proclamations, demands and requisitions of national governments or of any state, local or other governmental authority which may now or hereafter govern performance hereunder including all applicable laws, executive orders, regulations, ordinances, rules and proclamations regarding Equal Employment Opportunity.

14.10 **Entire Agreement.** This Agreement (including all attached Exhibits) contains the complete agreement between Seller and Purchaser with respect to the matters contained in this Agreement and supercedes all other agreements and Electric Service Regulations, whether written or oral, with respect to the matters contained in this Agreement.

14.11 **Other Agreements.** Seller and Purchaser have previously entered into or simultaneously herewith are entering into other agreements (“ Other Agreements”). While copies of these Other Agreements are attached hereto as Attachments, these Other Agreements are not part of this Agreement and are not intended and shall not be construed to modify or amend this Agreement.

The Other Agreements are:

Attachment 1: Substation Bill of Sale and Assignment dated January 1, 1997, as amended by Letter dated June 5, 2001

Attachment 2: Power Purchase Agreement dated effective May 16, 2002

Attachment 3: Generation Interconnection Agreement dated May 15, 2002

Attachment 4: Transmission Line Bill of Sale and Assignment dated January 1, 1997, as amended by Letter dated ~~_____~~ May 15, 2003.

Attachment 5: Transmission Operation and Maintenance Agreement dated January 1, 1997.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized as of the date first above written.

PACIFICORP

US MAGNESIUM LLC.

By: _____

By: _____

Name:

Name: Lee R. Brown

Title:

Title: Vice President

Address: 825 NE Multnomah
Portland, OR 97232

Address: 238 North 2200 West
Salt Lake City, Utah 84116

Exhibit A

Hourly Shaping Factors

| Hour Ending (Mtn. prevailing time) | Hour Ending (Pacific prevailing time) | Hourly Shaping Factor |
|---|--|------------------------------|
| 1400 | 1300 | 1.11 |
| 1500 | 1400 | 1.16 |
| 1600 | 1500 | 1.19 |
| 1700 | 1600 | 1.20 |
| 1800 | 1700 | 1.19 |
| 1900 | 1800 | 1.17 |
| 2000 | 1900 | 1.13 |
| 2100 | 2000 | 1.06 |

Exhibit B

Example Calculation of Replacement Power

| A | B | C | D | E | F | |
|--|-------------|--------------------------|-------------------------|----------------------------------|-------------------|-------------|
| Delivery Hour, Pacific prevailing time | Index Price | Hourly Shaping Factor | Adjusted Index Price | Replacement Power | Hourly Payment | |
| HE | 1-Jul-02 | | B * C | Measured at Point of Metering | D * E | |
| 100 | | | | | | |
| 200 | | | | | | |
| 300 | | | | | | |
| 400 | | | | | | |
| 500 | | | | | | |
| 600 | | | | | | |
| 700 | \$45.50 | | | | | |
| 800 | | | | | | |
| 900 | | | | | | |
| 1000 | | | | | | |
| 1100 | | | | | | |
| 1200 | | | | | | |
| 1300 | | | 1.11 | \$50.51 | 60.00 | \$ 3,030.30 |
| 1400 | | | 1.16 | \$52.78 | 60.00 | \$ 3,166.80 |
| 1500 | | | 1.19 | \$54.15 | 60.00 | \$ 3,248.70 |
| 1600 | | | 1.20 | \$54.60 | 60.00 | \$ 3,276.00 |
| 1700 | | | 1.19 | \$54.15 | 60.00 | \$ 3,248.70 |
| 1800 | | | 1.17 | \$53.24 | 60.00 | \$ 3,194.10 |
| 1900 | | 1.13 | \$51.42 | 60.00 | \$ 3,084.90 | |
| 2000 | | 1.06 | \$48.23 | 60.00 | \$ 2,893.80 | |
| 2100 | | | | | | |
| 2200 | | | | | | |
| 2300 | | | | | | |
| 2400 | | | | | | |

USM Exhibit 1SR.2
Surrebuttal Testimony of Roger J. Swenson
UPSC Docket 03-035-19

| | | | | | |
|--|--|--|--|--------------------|--------------|
| | | | | Daily Total | \$ 25,143.30 |
|--|--|--|--|--------------------|--------------|

Exhibit C

Curtailment Months

| Year | Number of Curtailment Months | Curtailment Months | Maximum Hours Available for Curtailment Each Calendar Year |
|------|------------------------------|-------------------------------------|--|
| 2002 | 2 | July August | 270 |
| 2003 | 4 | June July August September | 522 |
| 2004 | 4 | June July August September | 528 |

January

June

July

August

September

December

Exhibit D

Description of Dow Jones TM Palo Verde Market Index



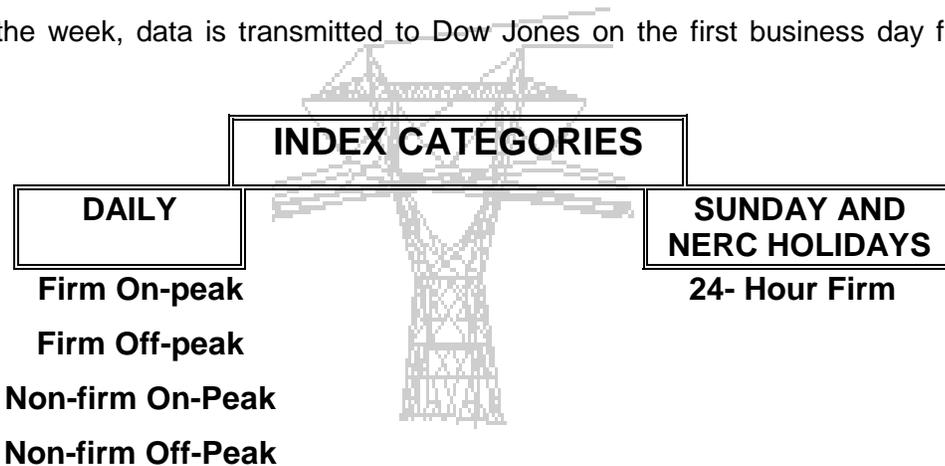
WHOLESALE ELECTRICITY PRICE INDEXES

PALO VERDE

The Dow Jones Palo Verde Electricity Price Indexes are volume weighted averages of specifically-defined bilateral, wholesale, physical transactions quoted in either dollars per megawatthour (\$/MWH) or dollars per megawatt (\$/MW). Calculations for these indexes average together power transactions from both Palo Verde and Westwing in Arizona.

Index participants provide Dow Jones with their daily volume weighted average prices and total volumes for eligible electricity products sold at Palo Verde and Westwing, as well as with any purchases made from entities not contributing to the indexes.

Participants are asked to provide Dow Jones with daily index data by 10 a.m. prevailing time at Palo Verde, the day after the transacted power moves. Although some Dow Jones Electricity Indexes are calculated for 365 days year, publication occurs only on business days. If a holiday falls during the week, data is transmitted to Dow Jones on the first business day following a break.



The following definitions have been designed to insure that each index category

represents a specific power product. Since each category has a unique definition, no single transaction can be included in more than one category. If a transaction does not precisely fit into an index category, it will not be included in our index calculations.

Firm Daily Indexes: The firm daily indexes average together blocks of power sold on a one-day forward pre-scheduled basis. No real-time power is included in these indexes. Transactions are limited to power traded in 16-hour blocks during on-peak hours and 8-hour blocks for off-peak. Transactions which call for delivery for more than one day are not included in calculations for these indexes. Volume should be reported as total megawatts (MW) transacted per hour.

Firm Sunday and NERC Holiday Index: A 24-hour firm index will be published for Sundays and NERC holidays. Transactions included in this index are limited to power traded in 24-hour pre-scheduled blocks.

Non-firm Daily Indexes: The non-firm indexes combine one day ahead pre-scheduled transactions with real-time transactions. The non-firm indexes follow the same convention as the firm indexes with respect to single day delivery. Volumes reported should reflect the total number of MWh transacted during the ON- or OFF-PEAK reporting period.

TERMINOLOGY

On-peak Hours: Hours ending 0700 - 2200 (6 a.m. - 10 p.m.) prevailing time at Palo Verde, seven (7) days a week including NERC holidays.

Off-peak Hours: Hours ending 2300-0600 (10 p.m. - 6 a.m.) prevailing time at Palo Verde, seven (7) days a week.

NOTE: Since Arizona does not observe Daylight Savings Time, time-related definitions are based on Palo Verde prevailing time.

Firm Energy: Firm energy is defined as being financially firm and backed with liquidating damages.

Non-firm Energy: Non-firm energy is defined as being subject to interruption at any time for any reason. Any recall provision would be for less than one hour from the scheduled start of service.

INDEX DATES

Daily Indexes: INDEX DATE = POWER DELIVERY DATE

The date on a daily index corresponds to the date the power is delivered. For example, prescheduled power transacted on Monday for delivery on Tuesday is averaged to form Tuesday's index. For indexes that include real-time power, Monday's prescheduled transactions are combined with Tuesday's real-time transactions to form Tuesday's index.

- Palo Verde on-peak and off-peak daily indexes are calculated seven days a week, including NERC holidays.
- The Palo Verde 24-Hour FIRM index will be calculated for Sundays and NERC Holidays.

If you have any questions or if any information on this sheet is not expressed clearly, please call

Antoine Eustache at (609) 520-7058 or Ernest Onukogu at (609) 520-4663.

If you have not received this sheet directly from the News Product Development index group, please check with us to insure that you are working with a current definition.

Dow Jones TM Palo Verde Firm, On Peak Price