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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Investigation of Revenue Requirement Impacts of the New Federal Tax Legislation Titled: "An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution of the budget for fiscal year 2018"	Docket No. 17-035-69
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**US MAGNESIUM, LLC'S RESPONSIVE COMMENTS ON TAX-RELATED RATE  
REDUCTIONS AND ON THE NEED FOR A HEARING**

US Magnesium, LLC ("US Mag") hereby files these comments in response to Rocky Mountain Power's ("RMP" or "the Company") Application filed in this docket on March 16, 2018, as well as in response to certain comments filed by the Division of Public Utilities ("Division") in this docket on February 23, 2018.

***Responsive Comments***

In its February 23, 2018 Comments, the Division suggested that special contracts should not be considered in determining credits or refunds associated with changes in US corporate tax laws, stating: "Special Contracts are negotiated independently and any benefits from the Tax Act

will be realized when contracts are renegotiated.” Similarly, the Application filed by RMP in this docket on March 16, 2018 included the following:

The Division also recommended excluding special contract customers from this refund. The Company agrees with this recommendation. As the Division noted, special contract rates are negotiated independent from the revenue requirement used to set other retail rates. Any consideration of the impact of the Tax Reform Act in the Company’s negotiations with special contract customers would need to be made in light of each special contract customer’s contract provisions and unique circumstances.

While US Mag acknowledges that special contract rates and terms are negotiated in contracts approved by the Commission separate from general tariff rates set in general rate cases, it vigorously disagrees with any suggestion or notion that special contracts customers are not entitled to the benefits of dramatic reductions in RMP’s corporate tax rates.

Like general tariff rates, US Mag’s current and prospective special contract rates were all negotiated in a context in which RMP’s revenue requirement was based on pre-2018 corporate tax rates. In negotiating US Mag’s special contract rates, RMP’s claimed cost of serving US Mag is a significant factor. Indeed, it is US Mag’s understanding that both the rates under its current energy services agreement (“ESA”) and its proposed rates under a new ESA currently before the Commission for approval in Docket 17-035-71 recover RMP’s full claimed cost of service<sup>1</sup> for US Mag, including pre-2018 tax rates. Moreover, US Magnesium’s special contract rates adjust based on and concurrently with the average percentage change in general tariff rates, and they include EBA, RBA, STEP and other surcharges.

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<sup>1</sup> The actual cost of serving US Mag has not been formally adjudicated for many years. US Mag is a unique customer that has always received only interruptible service. US Mag has never accepted RMP’s approach to calculating the cost of providing interruptible service to US Mag. Nevertheless, it is US Mag’s understanding that, even based on RMP’s approach to calculating cost of service, US Mag’s special contract rates are at or very near cost of service based on pre-2018 corporate tax rates.

For the very same reasons that current tariff rates are no longer just and reasonable—in that they are based on a revenue requirement that includes dramatically higher tax rates than RMP is currently paying—US Mag’s current and proposed special contract rates are no longer just or reasonable. It would be extremely unfair and unreasonable, and unlawfully discriminatory, to deny rate relief stemming from an extraordinary change in RMP’s expenses to US Mag, while granting such relief to other customers. US Mag’s special contract rates are every bit as much influenced by RMP’s corporate tax rates and revenue requirement as are any other customer’s.

It should be noted that the comments of the Division and RMP do not necessarily contend that special contract customers should not receive any benefits from tax reform; rather, they imply that appropriate rate reductions stemming from tax reform should be negotiated in the special contract process. However, any such notion under current circumstances is unreasonable and untenable. It ignores the fact that potential expense and revenue requirement impacts of tax reform were not known and could not have reasonably been estimated at the time the special contracts were negotiated.

US Mag’s current special contract was approved in 2014; nobody could have anticipated or predicted at that time the dramatic tax reductions that occurred in 2018. Nor could RMP or US Mag have reasonably estimated the impacts of tax reform on RMP’s revenue requirement or US Mag’s rates when they negotiated the ESA now before the Commission for approval in Docket 17-035-71. That ESA was negotiated over several months prior to its execution on December 28, 2017. This docket exploring potential implications of tax reform was not opened until December 21, 2017. In its filing in this docket on January 12, 2018, RMP offered to

provide initial estimates of some impacts of tax reform on its Utah revenue requirement on January 31, 2018, which was later extended to February 7, 2018. In its filing on that date, RMP provided a general explanation of multiple implications of tax reform and a partial estimate of the revenue requirement impacts of two—but not all—such implications. RMP has indicated that it will file updated revenue requirement impact projections on June 15, 2018.

There was simply no way for RMP or US Mag to make any kind of meaningful estimate of the impacts of tax reform on RMP's revenue requirement, US Mag's cost of service, or proper US Mag special contract rates prior to execution of the new ESA last December. US Mag did, however, discuss with RMP potential impacts on its special contract rates of tax reform at the time the ESA was executed. Indeed, US Mag asked for and received a rough estimate of those impacts from RMP. The parties could not delay execution of a new ESA to await details of the impact of tax reform, however, because in Paragraph 3 of a Stipulation and Settlement Agreement entered into in Docket 17-035-56 on or about November 3, 2017 among RMP, the Division and the Office, US Mag's current ESA was extended only through April 30, 2018, and RMP promised to "reach agreement with US Mag on, and file a new electric service agreement and supporting Application with the Commission prior to January 1, 2018." RMP and US Mag thus did not have an ability to delay execution of the new ESA pending clarity on potential impacts of tax reform on RMP's revenue requirement or US Mag's cost of service.<sup>2</sup>

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<sup>2</sup> In comments filed on March 6, 2018, in Docket 17-035-71, US Mag asked the Commission either to delay approval of US Mag's new ESA to permit US Mag and RMP to negotiate the impacts of tax reform on US Mag's new special contract rates, or to confirm that rate reductions stemming from tax reform should be determined for US Mag, like other customers, in this Docket. US Mag repeats that request here.

The fact of tax reform was known at the time US Mag's new ESA was executed, even if not when the rates were negotiated. However, it was clear that the rate implications of tax reform would not be known for several months. US Mag thus relied upon language in Section 3.12 of the ESA to deal with tax reform-related rate reduction. That section provides:

Purchaser shall be subject to other surcharges, credits or balancing accounts only if the Commission determines that Purchaser will be subject to the same on a prospective basis in an appropriate proceeding. Such surcharges and credits will change consistent with the effective date in the applicable tariff. Unless otherwise specified in the tariff adjustment schedule or herein, the surcharges or credits applicable to Purchaser will be set to collect or credit the same percent of Purchaser's base revenue as corresponds to the average percentage collected or credited with respect to the total Utah retail base tariff revenues for the effective period.

US Mag reasonably anticipated that, like other customers whose rates were calculated in light of the pre-2018 tax structure, it would share in any rate reductions resulting from tax reform as determined in this docket—the “appropriate proceeding” for such a determination. Neither the fact that US Mag's rates are negotiated outside of a general rate case nor the fact that they are reflected in special contracts rather than general tariffs is a sufficient or lawful basis for discriminating against US Mag or for denying it appropriate rate relief as a result of dramatic reductions in RMP's tax rates.

### ***Need for Hearing***

The Commission's Scheduling Order in this Docket also asks parties for input on whether a hearing is necessary in this docket. US Mag submits that a hearing is not necessary for the Commission to approve rate reductions in order to partially reflect reductions in RMP's income tax expenses resulting from tax reform, so long as those rate reductions are uniformly spread among all of RMP's retail customers in Utah. Under Utah Code Ann. §§ 54-3-3 and 54-7-12(6), rate reductions may go into effect without a hearing.

However, Utah Code Ann § 54-3-1 requires that all rates must be “just and reasonable” based on cost or service and certain other relevant factors, and § 54-3-8 prohibits rates that subject any customer to “prejudice or disadvantage” or that establish or maintain “any unreasonable difference” in rates compared to other customers, and empowers the Commission to “determine any question of fact” in such regards. Thus, before the Commission could properly authorize rates that would subject US Mag to prejudice or disadvantage, or a difference in rates compared to other customers—which would clearly be the case were special contract customer to be the only retail customers denied the benefits of reduced utility expenses stemming from tax reform—the Commission would need to first hold a hearing, receive evidence and make findings of fact based on competent evidence that the resulting rate impacts on US Mag would not be unjust, unreasonable, prejudicial or disadvantageous, and that there would be no “unreasonable difference as to rates ... as between classes of service.” These types of findings could be made only after a hearing, although here no such findings could properly be made.

### ***Conclusion***

US Mag respectfully asks the Commission to direct RMP to reduce US Mag’s rates by the same overall percentage decrease granted to Utah retail base tariff rates, effective January 1, 2018, and continuing under the ESA before the Commission for approval in Docket 17-035-71. US Mag submits that any other result would be extremely unfair and prejudicial to US Mag, a large Utah employer, as well as discriminatory and unlawful.

DATED this 9<sup>th</sup> day of April 2018.

HATCH, JAMES & DODGE

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

/s/ \_\_\_\_\_

Gary A. Dodge  
Attorneys for US Mag

Certificate of Service  
Docket No. 17-035-69

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served by email this day 9<sup>th</sup> day of April 2018, on the following:

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