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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

n the Matter of the Request for Agency Action
And Complaint of US Magnesium, LLC
against Dominion Energy Utah

Docket No. 17-057-13

US MAGENESIUM, LLC'S 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 Motion for Summary Judgment.

I. INTRODUCTION

This docket arises out of a dispute between US Magnesium and Dominion Energy Utah and its predecessor, Questar Gas (collectively, "DEU") regarding DEU's efforts to impose penalties against US Magnesium for its use of natural gas during a period of interruption on January 6-7, 2017. DEU purports to impose penalties under Section 3.02 of DEU's Utah Tariff ("DEU Tariff"). DEU Tariff § 3.02 permits DEU to impose penalties for a customer's failure to interrupt its gas usage during an interruption *only if* DEU first properly notifies the customer of

the interruption. DEU failed to properly notify US Magnesium of the January 6-7, 2017 interruption. US Magnesium had provided to DEU certain phone numbers for DEU to use to contact US Magnesium in the case of an interruption. Those interruption contact phone numbers contained extensions. Unbeknownst to US Magnesium, DEU's automated notification system—employed by DEU for the first time for the January 6-7, 2017 interruption—could not dial through to phone numbers with extensions. DEU's automated notification system did not dial through to the interruption contact phone numbers provided for an interruption. As such, DEU did not properly notify US Magnesium of the January 6-7, 2017 interruption and it cannot impose penalties pursuant to DEU Tariff § 3.02.

There are no genuine disputes of material fact in this matter. DEU does not dispute that its automated notification system failed to dial through to the interruption contact phone numbers provided to it by US Magnesium. Rather, DEU asserts that it made efforts to notify US Magnesium of the interruption by other means. As set forth below, the facts surrounding those efforts to notify US Magnesium are not disputed and do not alter the fact that DEU failed to properly notify US Magnesium of the interruption.

II. INDEX OF EXHIBITS

The following exhibits are attached hereto:

- A. Direct Testimony of Roger Swenson (US Magnesium – Dec. 22, 2017)
- B. Direct Testimony of Mike Tucker (US Magnesium – Dec. 22, 2017)
- C. US Magnesium Direct Testimony Exhibits 1-11 (US Magnesium – Dec. 22, 2017)
- D. Direct Testimony of Bruce Rickenbach & Exhibits (DEU – Jan. 12, 2018)
- E. Direct Testimony of William Schwarzenbach & Exhibits (DEU – Jan. 12, 2018)
- F. Rebuttal Testimony of Roger Swenson (US Magnesium – Jan. 26, 2018).
- G. Dominion Energy Tariff § 3.02
- H. Jan. 6, 2017 Text Message to Roger Swenson from “76127”

III. STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE

A. US Magnesium's TS Agreement With DEU

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

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).

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.*).

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.*).

B. DEU Tariff § 3.02²

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."³

¹ A copy of the TS Agreement is found in Exhibit C, US Magnesium Direct Testimony Exhibit 2. A copy of the TS Agreement is also found in DEU Exhibit 1.2, attached to the Direct Testimony of Bruce Rickenbach, attached hereto as Exhibit D.

² The Commission's interpretation of DEU Tariff § 3.02 governs this dispute. A copy of the DEU Tariff is attached hereto as Exhibit G and is incorporated as though fully set forth herein.

³ Exhibit G (DEU Tariff § 3.02) at Page 3-2.

- 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.”⁴
- 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.”⁵
- 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.”⁶
- 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.”⁷

C. Customer Information Sheet

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).

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at Page 3-3.

& 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).

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).

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)).

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).⁸

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:

⁸ The Customer Information Sheet was also previously filed by DEU as DEU Exhibit 1.1, attached to the Direct Testimony of Bruce Rickenbach.

<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

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)*).

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*).

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*).

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).

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).

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)).

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).

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).

D. DEU’s Automated Notification System

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).

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).

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).

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).

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).

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).

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

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).

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).

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).

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 hearing 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).*

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)*⁹).

E. DEU Failed To Properly Notify US Magnesium Of January 6-7, 2017 Interruption

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*

⁹ Provided as US Magnesium Direct Testimony Exhibit 8, attached here as Exhibit C.

(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).

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).

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).

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.

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).

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)).

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)).

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).

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”)).

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).

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).

F. Penalties DEU Seeks to Impose On US Magnesium Pursuant to DEU Tariff § 3.02

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).

IV. ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” UTAH R. CIV. P. 56(c). Summary judgment may be sought with respect to “any issues raised by the complaint and answer” or for a “determination of issues raised by any counterclaim or cross-claim.” *Timm v. Dewsnup*, 851 P.2d 1178, 1181 (Utah 1993). If the moving party presents evidence sufficient to determine an issue raised by the pleadings and that no material issues of fact remain, the burden then shifts to the nonmoving party to identify contested material facts, or legal flaws in the determination sought by the moving party. *See Orvis v. Johnson*, 2008 UT 2, ¶ 10, 177 P.3d 600, 602; *see also Giusti v. Sterling Wentworth Corp.*, 2009 UT 2, ¶ 53, 201 P.3d 966.

Disputes of facts that are not determinative will not preclude summary judgment. *See Burns v. Cannondale Bicycle Co.*, 876 P.2d 415, 419 (Utah Ct. App. 1994) (“[T]he mere existence of genuine issues of fact . . . does not preclude the entry of summary judgment if those issues are immaterial to resolution of the case.” (ellipses original; quoting *Horgan v. Industrial Design Corp.*, 657 P.2d 751, 752 (Utah 1982))). Summary judgment is appropriate “where the ‘nonmoving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof.’” *Id.* at 420 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The essential facts in this action are not disputed and summary judgment in favor of US Magnesium is appropriate.

B. US MAGNESIUM IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

As set forth below, DEU failed to properly notify US Magnesium of the January 6-7, 2017 interruption and, therefore, it may not impose penalties on US Magnesium pursuant to DEU Tariff § 3.02. US Magnesium is, therefore, entitled to judgment as a matter of law and this Commission should grant its motion and rule that DEU may not impose penalties on US Magnesium pursuant to DEU Tariff § 3.02.

1. DEU May Not Impose Penalties Under DEU Tariff § 3.02 Unless It First Properly Notifies A Customer Of An Interruption.

DEU Tariff § 3.02 imposes enormous penalties on customers who fail to interrupt their gas usage during a period of interruption when that customer has been properly notified of the interruption. The provision imposes a \$40-per-decatherm penalty on all interruptible volumes utilized by a customer who was properly notified of the interruption.¹⁰ This \$40-per-decatherm penalty represents a per-Dth volumetric rate that is more than *50 times higher* than the highest per-Dth rate that US Magnesium pays under the TS Rate Schedule.¹¹ The \$40-per-decatherm penalty is, therefore, intended to be punitive and should only be imposed when DEU has strictly complied with its obligations to provide notice of an interruption to the customer and when the customer is clearly at fault for failing to interrupt. As set forth below, DEU did not strictly comply with its obligation to notify US Magnesium of the January 6-7, 2017 interruption and US Magnesium is not clearly at fault for failing to interrupt.

¹⁰ DEU Tariff § 3.02 at Page 3-2 (“A customer who fails to interrupt when properly called upon by the Company will incur a \$40-per-decatherm penalty for all interruptible volumes utilized during the course of an interruption.”).

¹¹ See DEU Tariff § 5.07 at Page 5-12 (identifying rates for TS Rate Schedule customers and identifying Base DNG rate first 200 Dth at \$0.73301).

DEU’s Utah tariff provides for interruptible service for certain qualifying customers and DEU Tariff § 3.02 permits DEU to impose penalties on those interruptible customers for failure to interrupt—but only if certain strict obligations are met. First, Section 3.02 permits DEU to interrupt customers on interruptible rate schedules, noting that that “[s]ervice under interruptible service rate schedules is subject to temporary periods of interruption upon notice by the Company, whenever the Company determines interruption is required to serve firm sales service customers.”¹² Second, the tariff identifies the circumstances in which those interruptions may occur, noting that “[s]ystem emergencies, irregularities of weather or other operating conditions,” that “[a]ll interruptible service is subject to simultaneous interruption,” and that “[w]hen feasible, interruptions may be partial.”¹³ Third, Section 3.02 states that DEU may only interrupt a customer if it first notifies the customer of the interruption, stating that interruptible customers may only be interrupted “upon notice by the Company.” Fourth, to ensure that the customer receives notice of interruptions, the tariff 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.”¹⁴ Finally, the tariff requires customers to interrupt as soon as is feasible after notice from the company, stating that “[u]pon notice from the Company, interruptible customers are required to interrupt as soon as is operationally possible, but no later than two hours from notice.”¹⁵

If DEU complies with its obligation under Section 3.02 to notify the customer of an interruption, and if the customer—having been properly notified—fails to interrupt, then the

¹² DEU Tariff § 3.02 at Page 3-2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

customer can be subject to a penalty. This penalty, however, is predicated on DEU providing proper notice: “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.”¹⁶ Whether a customer is “properly called upon by the Company” must be viewed in light of the contact information the customer—as required by Section 3.02—provided to DEU to enable DEU to notify the customer in the event of an interruption. As set forth below, while US Magnesium complied with its tariff obligation to provide contact information to DEU that would permit DEU to immediately notify US Magnesium in the event of an interruption, DEU failed to properly notify US Magnesium at that contact information and, as such, cannot impose the penalties set forth in DEU Tariff § 3.02.

2. US Magnesium Complied With Its Obligation To Provide Contact Information To Enable DEU To Immediately Notify US Magnesium Of A Required Interruption.

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 required interruption” when it submitted the Contact Information Sheet to DEU on December 12, 2016—three weeks before the interruption at issue. As set forth in Section C of the Statement of Material Facts, above, DEU personnel emailed US Magnesium on November 29, 2016 to request that US Magnesium certify that the US Magnesium interruption contacts that DEU had on file were correct.¹⁷ With that email, DEU attached a Contact Information Sheet containing Interruption Contact numbers for two US Magnesium contacts, Mike Tucker and Roger Swenson, and listed phone numbers for each contact under the headers “Day Phone” and

¹⁶ *Id.* (emphasis added).

¹⁷ Statement of Fact ¶ 7.

“Mobile Phone.”¹⁸ The Interruption Contacts for Mr. Tucker and Mr. Swenson listed under the header “Day Phone” listed phone numbers with extensions.¹⁹ US Magnesium had for years provided DEU with 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 at issue here—DEU had successfully used those phone numbers with extensions to notify US Magnesium of interruptions.²⁰

On behalf of US Magnesium, Roger Swenson reviewed the Interruption Contacts on the Customer Information Sheet and, having determined that they were accurate, signed and returned the Customer Information Sheet to DEU on December 12, 2016 without making any changes.²¹ Because the Customer Information Sheet specifically listed Interruption Contacts, US Magnesium reasonably believed that if an interruption occurred it would receive notice from DEU at the phone numbers listed under “Interruption Contacts.”²² Moreover, because of the way the Customer Information Sheet organized the listed Interruption Contacts, including by “Day Phone” contact numbers, US Magnesium reasonably believed that if an interruption occurred during daytime hours, that it would receive notice of the interruption at the phone numbers with extensions listed under the “Day Phone” header in the “Interruption Contacts” portion of the Customer Information Sheet.²³ For security purposes, US Magnesium personnel are not permitted to carry or use mobile phones in any area of the plant.²⁴ For this reason, mobile phone

¹⁸ *Id.* ¶¶ 7-8. The Customer Information Sheet also listed a Fax number for Mr. Swenson. *Id.*

¹⁹ *Id.* ¶ 8 & 11.

²⁰ *Id.* ¶ 28.

²¹ *Id.* ¶ 10.

²² *Id.* ¶ 13.

²³ *Id.* ¶ 14.

²⁴ *Id.* ¶ 15.

numbers are not a reliable method of contacting US Magnesium of an interruption during the daytime hours when the plant is in operation.²⁵ 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.²⁶

Unfortunately, as set forth in Section IV.B.3., below, DEU's new automated notification system in use at the time of the January 6-7, 2017 interruption was not able to dial through to phone numbers with extensions and cannot leave voice messages on phone numbers with extensions.²⁷ DEU did not inform US Magnesium of this limitation in its notification system before the January 6-7, 2017 interruption.²⁸ The Customer Information Sheet that DEU sent to US Magnesium just six weeks before the interruption—and which US Magnesium returned just three weeks before the interruption—provided no notice of this limitation.²⁹ If DEU had informed US Magnesium that its notification system could not dial through to phone numbers with extensions, US Magnesium would have listed alternate Day Phone contact numbers or made alternate arrangements with DEU to provide Day Phone contact numbers that would work with DEU's automated notification system. Indeed, since the January 6-7, 2017 interruption, DEU has installed a direct dial telephone in its control room and has revised its customer information sheet to list that phone number as the "1ST" Day Phone Interruption Contact phone number for DEU to call in the event of an interruption.³⁰

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* ¶ 25.

²⁸ *Id.* ¶¶ 16, 26-27.

²⁹ *Id.* ¶ 16.

³⁰ *Id.* ¶ 17-18 & 30.

As these facts demonstrate, 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 required interruption.” US Magnesium expected that, in the event of an interruption, DEU would utilize the Interruption Contact information provided in the Customer Information Sheet and that, in the event of a daytime interruption, that DEU would contact US Magnesium at the phone numbers with extensions listed as the Day Phone Interruption Contacts. As set forth below, DEU failed to properly notify US Magnesium of the January 6-7, 2017 interruption.

3. DEU Failed To Properly Notify US Magnesium Of The January 6-7, 2017 Interruption

DEU failed to properly notify US Magnesium of the January 6-7, 2017 interruption when its automated notification system failed to contact US Magnesium at either of the Day Phone numbers listed in the Interruption Contact portion of the Customer Information Sheet. It is undisputed that during the January 6-7, 2017 interruption at issue in this docket, DEU’s automated notification system was not able to dial through to phone numbers with extensions or to leave voice messages at phone numbers with extensions and that, therefore, it did not notify US Magnesium at either of the two Day Phone numbers listed as Interruption Contacts on US Magnesium’s Customer Information Sheet on file with DEU. A brief history of DEU’s actions in notifying customers of interruptions and its use of an automated notification system demonstrates that DEU failed to properly notify US Magnesium of the January 6-7, 2017 interruption.

In the years prior to the January 6-7, 2017 interruption, US Magnesium had provided DEU with 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 at issue here—DEU had successfully used those phone numbers with extensions to notify US Magnesium of interruptions.³¹ In 2012, DEU began using an automated notification system to notify customers of interruptions.³² From 2014-2016, DEU’s automated notification system, called “Rapid Notify,” could not connect through a phone extension or switchboard.³³ For the 2016-2017 heating season, DEU switched to a new automatic notification system, called the SNS system, which also could not dial through to extensions or leave voice messages at phone numbers with extensions.³⁴

Despite the fact that DEU had previously used phone numbers with extensions to notify US Magnesium of interruptions, and despite the fact that the automated notification system utilized by DEU since at least 2014 and that would be utilized in the 2016-2017 heating season could not dial through to phone numbers with extensions, DEU sent a Customer Information Sheet to US Magnesium in November of 2016 listing as Interruption Contacts certain Day Phone numbers with extensions.³⁵ Moreover, DEU did not inform US Magnesium that its automated notification system could not dial through to phone numbers with extensions.³⁶

DEU experienced a system interruption beginning during the daytime of January 6, 2017, starting at approximately 11:11 a.m. and lasting until approximately 2 p.m. on January 7, 2017.³⁷ DEU sought to notify customers of the interruption by utilizing its SNS automated notification

³¹ *Id.* ¶ 28.

³² *Id.* ¶ 20.

³³ *Id.* ¶¶ 22-23.

³⁴ *Id.* ¶¶ 24-25.

³⁵ *Id.* ¶ 29.

³⁶ *Id.* ¶ 16, 26-27.

³⁷ *Id.* ¶ 31.

system.³⁸ Because the SNS system could not dial through to phone numbers with extensions, it could not dial through to the two Day Phone numbers listed in the Interruption Contacts section of US Magnesium's Customer Information Sheet.³⁹ As such, DEU's SNS system could not notify US Magnesium of a service interruption that occurred in the daytime at the phone number that US Magnesium expected to receive notification of such daytime interruptions—the Interruption Contact Day Phone numbers listed on the Customer Information Sheet.

DEU asserts in this matter that it contacted US Magnesium of the interruption in other ways (email, text message, etc.). Those contacts are not relevant to the question of whether DEU properly notified US Magnesium of the interruption. US Magnesium provided DEU with the appropriate method to notify US Magnesium of an interruption during daytime operating hours—by calling Mike Tucker and Roger Swenson at the Interruption Contact Day Phone numbers listed in the Customer Information Sheet. That is manner in which US Magnesium expected to receive notification from DEU of the interruption, and US Magnesium was unaware that DEU could not notify US Magnesium at those phone numbers because the SNS system could not dial through to phone numbers with extensions. DEU did not inform US Magnesium until *after* the interruption that the SNS system could not dial phone numbers with extensions. Once US Magnesium was aware of that fact, it provided a direct dial phone number to the control room and updated the information on the Customer Information Sheet.⁴⁰ If DEU had provided that information before the January 6-7, 2017 interruption, US Magnesium would have made such arrangements and would have received notification of the interruption.

³⁸ *Id.* ¶ 32.

³⁹ *Id.* ¶ 33.

⁴⁰ *Id.* ¶ 16, 26-27.

In addition to the fact that DEU failed to properly notify US Magnesium of the interruption by failing to notify US Magnesium at the Interruption Contact Day Phone numbers listed on the Customer Information Sheet, the emails and text messages sent by the SNS system also failed to provide notice of the interruption. DEU claims that the SNS system sent text messages to the mobile phone numbers listed on the Customer Information Sheet, but those text messages appeared as having come from a sender identified as “76127,” stating only that “Questar Gas has called system capacity and supply reduction interruptions. Please review your email for more details.”⁴¹ The text message did not state that it was from Questar and does not explain what the recipient of the message is to do in response, other than to “review your email.”⁴²

DEU further claims that the SNS system sent email messages to email addresses listed on the Customer Information Sheet. US Magnesium did not include any email addresses in the Interruption Contacts portion of the Customer Information Sheet and did not expect to receive interruption notifications via email. Moreover, the emails sent to US Magnesium personnel were not from a Questar or DEU email address. Rather, those emails came from an account named “no-reply@ecnalert.com,” which neither Roger Swenson nor Mike Tucker recognized as being associated with Questar or DEU.⁴³ There is simply no way for the recipient to know by looking at the email that it is not spam or some phishing protocol. Even if the recipient were to assume that the email is legitimate and is from DEU, the email did not clearly indicate that US Magnesium was required to reduce its usage. For instance, the email states that the Company is

⁴¹ *Id.* ¶¶ 34-36.

⁴² *Id.* ¶ 37.

⁴³ *Id.* ¶¶ 38-39.

implementing a “service interruption for customers with interruptible load.”⁴⁴ The email went on to state as follows:

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.

On the morning of January 6, 2017, US Magnesium was informed by its marketing agent that US Magnesium’s marketing agent would provide to the DEU system all of the gas that US Magnesium had nominated for that day.⁴⁵ That is, US Magnesium understood that its marketing agent would be supplying to the DEU system all of the volumes that US Magnesium had nominated to be delivered, and the email message directing US Magnesium to limit its usage “to not exceed the scheduled quantity being provided to the Questar Gas system for your use” merely informed US Magnesium that it did not need to reduce its usage.

DEU also asserts that its SNS system left voice messages on the Mobile Phone numbers identified in the Interruption Contact portion of the Customer Information Sheet. There are two issues with this assertion. First, as set forth above, for security purposes US Magnesium personnel are not permitted to carry or use their mobile phones in the plant. Mobile Phone numbers are, therefore, not a reliable way to notify US Magnesium of an interruption during daytime operating hours. Mobile Phone numbers are a reliable way of notifying US Magnesium of an interruption during nighttime hours. This is why US Magnesium listed office phone

⁴⁴ See January 6, 2017 email from “noreply@ecnalert.com” submitted as US Magnesium Direct Testimony Exhibits 6 and 11, attached hereto as Exhibit C.

⁴⁵ See Exhibit B (M. Tucker Direct Test.) at lines 81-89.

numbers (with extensions) as the Day Phone numbers to call in the event of an interruption. On January 6, 2017, Mike Tucker was at the plant but he had left his cell phone at home for security purposes.⁴⁶ Roger Swenson was driving and did not have cell phone coverage for most of the day of January 6, 2017.⁴⁷

Second, there has been no testimony or other evidence submitted in this case as to the contents of the voice message purportedly left on the Mobile Phones of Roger Swenson or Mike Tucker. If the voice messages were identical to the email from “no-reply@ecnalerts.com” then for the same reasons set forth above the voice message also did not clearly convey to US Magnesium that it was required to reduce its usage.

Finally, DEU asserts that DEU employee Bruce Rickenbach called US Magnesium’s Roger Swenson on January 6, 2017. Mr. Swenson has testified that Mr. Rickenbach’s call was to inquire as to whether the SNS system had worked—not to inform Mr. Swenson of the interruption.⁴⁸ Like the text message and the email discussed above, this phone call to inquire whether the SNS system had operated properly did not constitute proper notice of the interruption.

4. DEU Is Not Authorized To Impose Penalties Against US Magnesium Pursuant To DEU Tariff § 3.02 Related To The January 6-7, 2017 Interruption.

Because DEU did not properly notify US Magnesium of the January 6-7, 2017 interruption, it may not impose the approximately \$580,000 in penalties it seeks to impose against US Magnesium pursuant to DEU Tariff § 3.02. Citing DEU Tariff § 3.02, DEU seeks to

⁴⁶ *Id.* ¶ 41.

⁴⁷ *Id.* ¶ 40.

⁴⁸ *Id.*

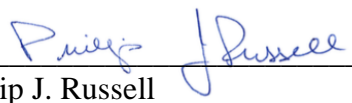
impose penalties against US Magnesium related to the January 6-7, 2017 interruption, including a penalty of approximately \$580,000 in per-decatherm penalties for interruptible volumes used during the interruption as well as a penalty whereby DEU would force US Magnesium to enter a new contract for higher firm contract levels going forward.⁴⁹ DEU cannot impose penalties under DEU Tariff § 3.02 unless it first properly notified US Magnesium of the interruption. Because DEU did not properly notify US Magnesium of the interruption, DEU cannot impose any penalties against US Magnesium.

IV. CONCLUSION

For the foregoing reasons, US Magnesium respectfully requests that the Commission enter an order granting this 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 2nd day of February 2018.

HATCH, JAMES & DODGE

/s/ 
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⁴⁹ *Id.* ¶ 42.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 2nd day of February 2018 on the following:

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