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dba Dominion Energy Utah*

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY ACTION AND
COMPLAINT OF US MAGNESIUM, LLC
AGAINST DOMINION ENERGY UTAH

Docket No. 17-057-13

**REPLY MEMORANDUM IN SUPPORT
OF DOMINION ENERGY UTAH'S
MOTION FOR SUMMARY
JUDGMENT AND SUPPORTING
MEMORANDUM**

Pursuant to R746-1-301 and R746-1-105 of the Utah Administrative Code and Rule 56 of the Utah Rules of Civil Procedure, Respondent Questar Gas Company dba Dominion Energy Utah (“Dominion Energy” or “Company”), through counsel, respectfully submits this Reply Memorandum in Support of Its Motion for Summary Judgment (the “Motion”).

INTRODUCTION

US Magnesium's opposition is not based on the language of Section 3.02 of the Tariff or the facts. Section 3.02 requires Dominion Energy to provide "notice" to customers before it calls for an interruption. To facilitate this notice, customers, including US Magnesium, are required to provide contact information to Dominion Energy that will allow the Company to immediately notify the customers of interruptions. If, after notice is sent, a customer fails to interrupt its interruptible usage, Section 3.02 imposes penalties on that customer. Section 3.02 does not, as US Magnesium suggests, require particular notice utilizing any specific means of communication.

Here, it is undisputed that, on January 6, 2017, the Company declared an interruption and notified US Magnesium of that interruption nine different ways, using telephone numbers and email addresses provided by US Magnesium for that purpose. US Magnesium admits that it received all but two of those notices, and admits receiving notice of the interruption from its own marketing agent. Despite this, US Magnesium did not interrupt its gas usage at any time during the interruption.

US Magnesium attempts to avoid being penalized by arguing that the notice it received was insufficient under Section 3.02. Its argument is this: To comply with the notice requirement of Section 3.02, the Company was required either to (i) ensure that notice was successfully delivered to *all of the contact points* provided by US Magnesium; or (ii) demonstrate that it provided notice to the two "Day Phone" numbers through which US Magnesium "expected" to receive notice of an interruption. Because this is its interpretation, US Magnesium claims it is irrelevant whether it received the interruption notice in seven other ways. But US Magnesium's interpretation finds no support in the language of Section 3.02 and would turn it on its head.

Section 3.02 does not condition the imposition of the penalties on a showing that the Company successfully delivered notice *to every point of contact* for a customer, nor does it require the Company to demonstrate that an interruption notice was delivered to a point of contact the customer subjectively claims was the proper point of contact. Section 3.02 requires the Company to provide notice to the customer using one or more of the methods provided by the customer for such notice. The Company went above and beyond what is required, and provided notice through nine different ways: two calls to business phone numbers, two voicemails on mobile phone numbers, two text messages to mobile phone numbers, two emails to addresses for US Magnesium’s designated Interruption Contacts, and a direct call between the Company and Roger Swenson.

In addition, US Magnesium’s attempts to dismiss the notices it did receive because it claims it did not get messages on two numbers is unavailing. US Magnesium admits that the remaining seven notices were delivered to numbers or email addresses provided by it. US Magnesium has no legitimate basis to claim that those notices did not constitute “notice” under Section 3.02.

US Magnesium should be held to account for its failure to interrupt its usage. The Commission should grant Dominion Energy’s Motion, and require US Magnesium to pay the penalties imposed by Section 3.02.

**REPLY TO US MAGNESIUM’S RESPONSE TO DOMINION ENERGY’S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

In its response to Dominion Energy’s Statement of Undisputed Material Facts (“Facts”), US Magnesium does not dispute, let alone mention, Fact Paragraphs 1-11, 17-18, or 22-23.

Therefore, under Utah Rule Civil Procedure 56, those facts should be deemed undisputed.¹

Dominion Energy replies to US Magnesium's responses to the other Facts as follows:

Fact Paragraph 12: On the morning of January 6, 2017, Dominion Energy declared an interruption and sent a notice of the interruption to all of its interruptible customers, including to the contacts identified in US Magnesium's Customer Information Sheet.

US Magnesium's Response: The evidence cited by DEU in support of Statement of Fact No. 12 does not support the assertion that DEU sent a notice of the interruption "to the contacts identified in US Magnesium's Customer Information Sheet," as alleged by DEU. DEU's cited evidence does not support the assertion (or the inference) that DEU provided proper notice of the interruption as required by DEU Tariff § 3.02. The evidence cited does not support the inference that DEU provided notice to US Magnesium at all of the "Interruption Contacts" on US Magnesium's Customer Information Sheet, or that DEU's efforts to provide notice to other contact points on US Magnesium's Customer Information Sheet were clearly sent by DEU (or Questar Gas).

First, it is undisputed that DEU did *not* send a notice of the interruption to the Interruption Contact "Day Phone" numbers with extensions identified on US Magnesium's Customer Information Sheet.

Second, DEU has presented no evidence to support the assertion that DEU notified US Magnesium of the interruption by sending a fax to the "Fax. No." identified as an "Interruption Contact" in US Magnesium's Customer Information Sheet.

Third, the evidence in this matter clearly demonstrates that the January 6, 2017 text messages sent to Mr. Swenson and to Mr. Tucker were sent from a sender identified only as "76127"—a number unknown to Mr. Swenson and to Mr. Tucker. While the body of the text message indicated that "Questar Gas has called system capacity and supply reduction interruptions," it did not state whether the interruptions were system wide or were limited in scope and did not notify the recipient that these interruptions would require the recipient to curtail gas usage. Rather, the body of the message only directed the recipient to "[p]lease review your email for more details."

Fourth, the evidence in this matter clearly demonstrates that the January 6, 2017 emails DEU relies on that were sent to Mr. Swenson and Mr. Tucker were sent by an account titled "no-reply@ecnalert.com," and were not identified as having come from DEU or Questar Gas. The emails did not clearly direct its recipients to take any particular action.

¹ See Utah R. Civ. P. 56(e)(2).

Dominion Energy's Reply: *Undisputed.* US Magnesium's response to Fact Paragraph 12 misses the points being conveyed. Fact Paragraph 12 make two points, neither of which is disputed. First, it states that Dominion Energy called an interruption on the morning of January 6, 2017. US Magnesium does not dispute that statement, let alone provide any evidence to refute it. The fact that Dominion Energy called for an interruption during the morning of January 6, 2017 is uncontested.

Second, US Magnesium's response addresses matters not raised in the paragraph. Fact Paragraph 12 does show that notice was sent to both of the Interruption Contacts identified in the Customer Information Sheet provided by US Magnesium, and provides copies of emails with the language sent to each Interruption Contact. The Fact paragraphs that followed Paragraph 12 in the Motion went into specific detail about each type of notice provided to US Magnesium's Interruption Contacts.² It is with those specific forms of notice that US Magnesium seeks to quibble (albeit ineffectively). The Company addresses those concerns below.

Fact Paragraph 13: At 11:11 a.m., Dominion Energy's notification system sent an email to Mr. Swenson at US Magnesium stating:

The Questar gas service territory is experiencing extreme cold temperatures and supply constraints. Firm load demand on the Questar Gas distribution system requires that Questar Gas implement a service interruption for customers with interruptible load.

Supply availability from upstream pipelines to the Questar gas system is also currently limited. Questar Gas is unable to provide additional supplied 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.

² See Motion, Fact Paragraphs 13-20 (outlining the telephone calls made and the text messages and emails sent to the Interruption Contacts).

Your allowable usage for each hour will be the equal to the lesser of your firm contract amount divided by 24, or your scheduled quantity divided by 24, for each hour of the interruption. This will be calculated for each hour based on the scheduled quantity available for the applicable hours of interruption.

If necessary, please restrict your usage as soon as possible, but in no case more than two hours from this notice.

You will be notified by Questar Gas when the interruption is lifted.

Please call your nominating party (Marketing Agent) if you have any questions regarding your scheduled quantity of your Questar Gas representative with any questions regarding your firm contract limit.

US Magnesium Response: US Magnesium notes—and this point appears to be undisputed—that the referenced email was sent from an account titled “no-reply@ecnalert.com,” and was not identified as having come from DEU or Questar Gas. Moreover, the email message does not clearly indicate what the recipient is required to do in response. The second paragraph of the notice informs the recipient “to limit your usage to not exceed the scheduled quantity being provided to the Questar Gas system for your use.” The third paragraph, however, states that “[y]our allowable usage for each hour will be equal to the lesser of your firm contract amount divided by 24, or your scheduled quantity divided by 24, for each hour of the interruption.” These two statements conflict with each other and do not clearly inform the recipient what action it must take in response to the email message.

Dominion Energy’s Reply: *Undisputed.* Contrary to US Magnesium’s apparent position, Section 3.02 does not require Dominion Energy to send interruption emails from an account that includes the Company’s name. As noted in Fact Paragraph 13, the emails were sent to Mr. Tucker and Mr. Swenson from the Company’s electronic notification system, just as Dominion Energy had informed US Magnesium that it would.³ The emails clearly state they are

³ Rickenbach Testimony at 6:129-8:163 & Exhibit 1.6; US Magnesium Exhibits 6, 11; Rickenbach Testimony, Exhibit 1.3 (November 2016 email from Bruce Rickenbach to Roger Swenson stating: “We utilize a ‘Rapid Notify’ system to alert our industrial and commercial customers of any interruptions or other important messages. This tool is an electronic calling, texting, and email system that sends simultaneous messages to ensure timely communications . . .”).

from Questar Gas, and state that Questar Gas had ordered an interruption.⁴ Mr. Tucker and Mr. Swenson admit to having received text messages directing them to the emails.⁵ If Mr. Tucker or Mr. Swenson had questions about whether the emails were from the Company, they could have (and should have) called the Company, as the email advises.⁶ In point of fact, US Magnesium never questioned the source of the emails until its witnesses filed testimony in this matter.⁷

US Magnesium's contention that the emails do not clearly indicate what the recipients were to is incorrect. As noted in the first paragraph of the quoted language above (which US Magnesium conveniently fails to note), the email instructs: "The Questar gas service territory is experiencing extreme cold temperatures and supply constraints. *Firm load demand on the Questar Gas distribution system requires that Questar Gas implement a service interruption for customers with interruptible load.*"⁸ Furthermore, the email tells customers to "limit [their] usage to not exceed the scheduled quantity being provided to the Questar Gas system for your use."⁹ Finally, it tells customers "[i]f necessary, please restrict your usage as soon as possible, but in no case more than two hours from this notice" and encourages them, if they have questions to contact their marketing agent or the Company.¹⁰ US Magnesium's marketing agent, Mr. Medura, clearly understood what was required, because, after the notice went out, he sent notice of the interruption to US Magnesium.¹¹ In his email on January 6th, he stated:

Please note below the interruptible curtailment notice from Questar Gas. Questar is requesting customers with interruptible gas usage to reduce their usage to the lesser of their nominated volume or their firm contract amount. As the interruption may be less than 24 hours Questar will apply an hourly ratable

⁴ *Id.*

⁵ See Direct Testimony of Roger Swenson ("Swenson Testimony") at 9: 176-10:204;11:227-239; Direct Testimony of Mike Tucker ("Tucker Testimony") at 3:63-4:73; US Magnesium Exhibits 6, 11.

⁶ Rickenbach Testimony, at Exhibit 1.6; US Magnesium Exhibits 6, 11.

⁷ Rickenbach Testimony at 7:152-54.

⁸ *Id.*, Exhibits 1.6 & 1.7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, Exhibit 1.9 (Attachment 1.6).

volume to your usage for a partial interruption for the day. *If you do not have firm capacity with Questar Gas please reduce your usage to zero during the curtailment period until further notice.*

We do not have confirmed nomination volumes for the current cycle as of yet. I will keep customers up to date as information becomes available.¹²

US Magnesium can hardly claim to have misunderstood that an interruption had been called and what it was to do when its own marketing agent was telling it that an interruption had been called and to interrupt *all of its interruptible usage.*

Fact Paragraph 14: At 11:13 a.m., Dominion Energy’s system sent an identical email to Mr. Tucker. Mr. Tucker admits having received this email.

US Magnesium’s Response: US Magnesium reasserts its response to DEU Statement of Fact No. 13 as though fully set forth herein.

Dominion Energy’s Reply: *Undisputed.* See Dominion Energy’s Reply to Fact Paragraph 13 above.

Fact Paragraph 15: At 11:15 a.m., Dominion Energy’s automated system called Messrs. Swenson’s and Tucker’s cellphones and left voice messages, notifying them of the interruption. The system also sent Mr. Tucker and Mr. Swenson text messages notifying them of the interruption. Mr. Swenson admits he received the text message, and Mr. Tucker admits he received the voice and text messages.

US Magnesium Response: US Magnesium notes that the evidence DEU cites does not support the first sentence of DEU Statement of Fact No. 15. DEU has presented no evidence in this matter regarding the content of voice messages left with Mr. Tucker and Mr. Swenson, so there is no support for the assertion that the voice messages notified Mr. Swenson or Mr. Tucker of the interruption. Moreover, DEU has not identified the phone number used by the DEU system for leaving those voice messages. As discussed below, the phone number the DEU system uses for text messages is not a known DEU or Questar Gas phone number and the same number may have been used to call cell phones.

As discussed in response to DEU Statement of Fact No. 12, above, the evidence in this matter clearly demonstrates that the January 6, 2017 text messages sent to Mr. Swenson and to Mr. Tucker were sent from a sender identified only as “76127”—a number unknown to Mr. Swenson or to Mr. Tucker. While the body of the text message indicated that “Questar Gas has called system capacity and supply reduction interruptions,” it did not state whether the interruptions were system wide

¹² *Id.* (emphasis added).

or were limited in scope and did not notify the recipient that these interruptions would require the recipient to curtail gas usage. Rather, the body of the message only directed the recipient to “[p]lease review your email for more details.”

Dominion Energy Reply: *Undisputed.* It is notable that neither Mr. Swenson nor Mr. Tucker deny receiving voice messages on their cellphones from the Company’s notification system or that those message were about the interruption. They simply claim that there is *no evidence* that the voice messages notified them of the interruption. This is simply untrue. In the cited testimony, Mr. Rickenbach states that the *interruption phone messages* were left on Mr. Swenson’s and Mr. Tucker’s mobile numbers.¹³ In addition, earlier in his testimony, Mr. Rickenbach explained that the Company’s automated notification system leaves automated voice messages, notifying customers *of the interruption*.¹⁴ In fact, the following appears in Mr. Tucker’s direct testimony:

Q. Did you receive a message from Questar on your cell phone regarding an interruption on January 6, 2017?

A. Yes. When I turned on my cell phone later in the day after I had gone home, I had a text message and a voice message from Questar. The text message directed me to view an email from the company and indicated that the email would contain instructions to follow for an interruption.¹⁵

US Magnesium provides no evidence to the contrary.

US Magnesium’s objection that the Company has not identified the number from which the DEU system placed the call to leave voice messages is a red herring. The Company is not required by Section 3.02 to place interruption calls from a telephone number that is recognizable to all customers. It is sufficient that the calls were made to customer-provided numbers and the messages left, and that is undisputed.

¹³ *Id.* at 8:164-168.

¹⁴ *Id.* at 3:53-60.

¹⁵ Tucker Testimony at 3:63-4:68 (emphasis added).

Finally, US Magnesium's claim that the interruption text messages sent to Mr. Swenson and Mr. Tucker were insufficient because they came from a sender identified as "76127," which was not a number known to them, is also irrelevant. Again, Section 3.02 does not require the Company to send interruption texts from a number that is recognizable to all its customers. Further, US Magnesium's objection is fully addressed by the undisputed content of the texts, which, Mr. Swenson confirmed, stated they came from Questar and said: "Questar Gas has called system capacity and supply reduction interruptions. Please review your email for more details."¹⁶ Similarly, there is no merit to US Magnesium's claim that the texts did not say whether the interruption was system wide or limited in scope, and did not say that the interruption would require a reduction in usage. The texts notified US Magnesium that an interruption had been called, and referred the recipient to the email, which, as noted above, told interruptible customers to cease interruptible usage until further notice.¹⁷ US Magnesium's Interruption Contacts have been involved in prior interruptions, and are not ignorant to what they were to have done.¹⁸

Fact Paragraph 16: US Magnesium claims that Mr. Swenson and Mr. Tucker did not understand the voice messages, emails, and texts they received and did not know who they were from, even though Mr. Swenson and Mr. Tucker had been informed an interruption from Dominion Energy was forthcoming, and the emails they received clearly referenced that "Questar Gas" was requiring the interruption.

US Magnesium Response: The assertion that "Mr. Swenson and Mr. Tucker had been informed of an interruption from Dominion Energy was forthcoming" is not supported by the evidence cited. DEU simply does not cite to any evidence in support of Fact No. 16 to support the statement, and it is unclear who DEU claims allegedly "informed" US Magnesium of a forthcoming interruption and what facts would support such a claim.

US Magnesium presumes that DEU is making reference to a communication US Magnesium received from its Marketing Agent at some point before the January

¹⁶ Swenson Testimony at 16:333-334.

¹⁷ Rickenbach Testimony, Exhibits 1.6 & 1.7.

¹⁸ *Id.* at 13:272-80.

6, 2017 interruption. In the first sentence of Section F of the “Background Facts” section of its Motion, DEU asserts that “Prior to January 6, US Magnesium’s marketing agent informed US Magnesium that Dominion Energy was likely to order an interruption in the coming days due to expected cold weather,” and cites to testimony from DEU witness Bruce Rickenbach, which itself cites to an email from Roger Swenson to Mr. Rickenbach. In that email, Mr. Swenson says “Matt Medura had been telling us to be expecting a call but Mike never got one.” DEU is not entitled to the inference that US Magnesium was informed that an interruption was “forthcoming” or “likely.” Rather, the only permissible inference is that US Magnesium was informed by its marketing agent to expect a call from DEU—a call that never came because DEU’s automated notification system could not dial through to phone numbers with extensions and, as such, could not notify US Magnesium at the Interruption Contact “Day Phone” number on US Magnesium’s Customer Information Sheet.

Dominion Energy Reply: *Undisputed.* US Magnesium’s dispute of this fact is not a dispute at all. The evidence supporting this fact shows that Mr. Swenson and Mr. Tucker claim in their testimony to not have understood why they receiving interruption voice messages, texts and emails. But, as US Magnesium concedes, it had been told by its marketing agent in the days leading up to the interruption to expect interruption notifications from the Company, which is precisely what occurred.¹⁹ The Company’s calls, emails and texts notified US Magnesium that an interruption had been ordered.²⁰

US Magnesium claims that the email—in which it admits having been told by its marketing agent, Mr. Medura, “to be expecting a call”—cannot be used by Dominion Energy to infer that US Magnesium was on notice of a forthcoming or likely interruption.²¹ But, the referenced email from Mr. Medura was for that specific purpose. It is titled “Gas Interruption Issues.”²² Thus, when Mr. Medura was telling US Magnesium to be expecting a call, it is not unreasonable to infer that he was telling them it was likely that an interruption would be ordered. Otherwise, there would be no reason for him to say to “expect” a call.

¹⁹ Opposition at 9; Rickenbach Testimony at 6:125-27 & Exhibit 1.5.

²⁰ See Rickenbach Testimony at 6:129-12:245 & Exhibits 1.6, 1.7 & 1.8; Swenson Testimony at 9: 176-10:204;11:227-239; Tucker Testimony at 3:63-4:73; US Magnesium Exhibits 6, 11.

²¹ Opposition at 9.

²² Rickenbach Testimony, Exhibit 1.5.

Fact Paragraph 19: Dominion Energy’s notification system is unable to dial extensions. As such, at 11:15 a.m., a voice message from the system was sent to US Magnesium’s switchboard. US Magnesium’s switchboard operator received the message, and was informed that the message could be repeated by pressing any button on the phone. However, the phone on which the message was received apparently had no buttons, and the operator hung up after hearing the message.

US Magnesium Response: The first sentence of DEU Statement of Fact No. 19 is undisputed. The entirety of the remainder of DEU Statement of Fact No. 19 is premised on a mischaracterization of a January 26, 2017 email between US Magnesium witnesses Mike Tucker and Roger Swenson. In its attempt to support this incorrect statement, DEU cites the email, as well as testimony from DEU witness Bruce Rickenbach, who offers testimony about the email despite not being a recipient of the email and having no personal knowledge of the email. As such, US Magnesium objects to Fact No. 19 on the grounds that the testimony of Mr. Rickenbach regarding the email lacks foundation and is not admissible. US Magnesium further objects that the assertion in Statement of Fact No. 19 that the call referenced in the email came at 11:15 a.m. on January 6, 2017 is not supported by the email. The cited email does not state the time of the alleged call and, as set forth below, the email references a phone call on a completely different date *after* the interruption in question.

In addition to the fact that Mr. Rickenbach lacks foundation to testify about the January 26, 2017 email between Mr. Tucker and Mr. Swenson, Mr. Rickenbach’s testimony purporting to explain the email is simply wrong. US Magnesium has offered testimony from Mr. Swenson—the recipient of the email—describing the context in which the email was sent. In his testimony, Mr. Swenson states that the January 26, 2017 email did not reference a phone call made by DEU to US Magnesium on January 6, 2017. Rather, the phone call referenced in the email was made on January 26, 2017—*after* the January 6-7, 2017 interruption and was made in the context of US Magnesium attempting to remedy the fact that DEU’s automated notification system cannot dial through to the Interruption Contact Day Phone numbers with extensions listed in US Magnesium’s Customer Information Sheet. In an attempt to provide a phone number that DEU’s automated notification system can contact in the event of an interruption, US Magnesium sought to install a phone in the US Magnesium control room that can be reached without dialing an extension. US Magnesium had DEU call on January 26, 2017 to test the phone to see if DEU’s system could dial the new phone. The initial call on that date was unsuccessful. Subsequent tests using different phones proved successful and US Magnesium now has a phone in its control room that can be reached without dialing an extension so that DEU can dial through using its automated notification system.

If DEU had notified US Magnesium prior to the January 6-7, 2017 interruption that the DEU automated notification system could not dial through to phone numbers with extensions, it would have installed the direct dial phone in the control room, which is manned 24 hours a day, and would have identified this control room phone as the Interruption Contact Day Phone number on its Customer

Information Sheet. This would have ensured that DEU's system could notify US Magnesium of an interruption.

Dominion Energy Reply: *Undisputed.* US Magnesium claims the cited email was about phone testing that occurred two weeks after the interruption notice. Whether true or not is unknown, but US Magnesium misses the point of Paragraph 19. On January 6, 2017, the Company's notification system placed calls to all of the telephone numbers provided by US Magnesium, including the "Day Phone" numbers.²³ No party disputes that the notification system could not leave messages on the indicated extensions, because the system could not dial extensions. The point of Paragraph 19 was that the system made calls to those numbers and, when it could not reach the extensions, would have been re-routed to the switchboard.

Fact Paragraph 20: During the afternoon of January 6, 2017, and as a courtesy to US Magnesium, Mr. Rickenbach called Mr. Swenson on his cellphone regarding the interruption notice. Mr. Swenson answered the call, and Mr. Rickenbach asked Mr. Swenson whether he had received the interruption notice. Mr. Swenson indicated that he was traveling but had received the notice.

US Magnesium Response: US Magnesium disputes the inference that Mr. Rickenbach's call to Mr. Swenson constitutes notice or an admission that US Magnesium received notice. Regarding this call, Mr. Swenson states in his direct testimony that Mr. Rickenbach called to ask if the automated notification system had worked, leaving the impression that Mr. Rickenbach was not sure that the system had worked. Mr. Swenson responded that he did receive a text message, but that he was traveling through an area with no cell service when the text message was sent and that he only received the text message later, once he returned to an area with cell service. Mr. Swenson further testified that, at the time of his call with Mr. Rickenbach, he did not know that DEU's automated notification system could not contact the Interruption Contact Day Phone numbers on US Magnesium's Customer Information Sheet, and that he assumed that US Magnesium had received a phone call on its land lines with extensions.

Dominion Energy Reply: *Undisputed.* Mr. Rickenbach's and Mr. Swenson's testimonies confirm that Mr. Rickenbach contacted Mr. Swenson on his cellphone on January 6, 2017 to notify him of the interruption, and that Mr. Swenson answered the call and confirmed that he had received the interruption notices:

²³ Rickenbach Testimony, Exhibit 1.4.

From Mr. Rickenbach's Testimony:

In the afternoon of January 6, 2017, I made a courtesy call to Mr. Swenson on his cell phone. He answered and we spoke. I asked if he had received the notice of interruption. He indicated that he was traveling, but that he had received the notice. Mr. Swenson briefly spoke of operational procedures that would occur in order to get US Magnesium's usage within film contractual limits, and that was the extent of the phone call.²⁴

Mr. Swenson's Testimony:

Bruce Rickenbach of Questar Gas/DEU contacted me on my cell phone on January 6, 2017 while I was driving to California. He seemed very concerned about whether the notification system had worked *and I told him I got his message* but that I was driving across the Mohave Desert when it arrived and did not receive it until later when I returned to an area with cell phone service. At the time I did not know that the notification system could not contact the Interruption Contact Day Phone numbers we had listed in the Customer Information Sheet and that, as a result, the notification system had not informed US Magnesium of the interruption. I assumed wrongly that the system had dialed through the extensions to the US Magnesium utility foreman Mike Tucker and that Questar Gas/DEU had provided proper notice to the US Magnesium plant.²⁵

It is irrelevant whether Mr. Swenson knew the Company's automated system could not contact Mr. Swenson's or Mr. Tucker's office numbers or whether Mr. Swenson assumed others at US Magnesium would also be receiving a call regarding the interruption. Dominion Energy spoke with Mr. Swenson (one of US Magnesium's Interruption Contacts) and confirmed he received the interruption notice. At that point, Mr. Swenson had the duty to ensure US Magnesium responded to the interruption notice.

Fact Paragraph 21: Despite receiving the foregoing interruption notices, and notice of the interruption from its gas marketer, US Magnesium did not interrupt its gas usage prior to the Company lifting the interruption.

²⁴ Rickenbach Testimony at 10:220-11:225.

²⁵ Swenson Direct Testimony at 11:229-239 (emphasis added).

US Magnesium Response: US Magnesium objects to DEU Statement of Fact No. 21 on the grounds that it is not supported by the evidence. The only evidence cited in support of the statement of fact is DEU Exhibit 1.10 attached to the Direct Testimony of Bruce Rickenbach. That Exhibit sets forth several emails from US Magnesium’s marketing agent, Matt Medura, to numerous recipients.

US Magnesium responds to the assertion regarding the “foregoing interruption notices” by incorporating herein its response to DEU’s factual allegations regarding those purported notices, set forth above.

Moreover, US Magnesium objects to DEU’s use of the email from US Magnesium’s marketing agent as evidence that US Magnesium received notice of the January 6-7, 2017 interruption. The cited email is not relevant to the issue of whether DEU is permitted to impose sanctions under DEU Tariff § 3.02. That provision permits DEU to impose penalties only if a customer “fails to interrupt when properly called upon *by the Company* to do so.” Communications US Magnesium received from its marketing agent are not communications from DEU. In addition, US Magnesium notes that the referenced email does not indicate which email addresses it went to and there is no evidence to support any inference that the email went to any of the emails on US Magnesium’s Customer Information Sheet. Furthermore, there are no email addresses on the US Magnesium Customer Information Sheet listed under “Interruption Contacts,” and, as such, an email—particularly an email from someone other than DEU—cannot constitute “notice” of the January 6-7, 2017 interruption.

Dominion Energy Reply: *Undisputed.* US Magnesium does not dispute that it did not interrupt its gas usage on January 6-7, 2017. While it claims to dispute receiving notice, that claim, as demonstrated above and in the testimony cited in the Company’s Motion, demonstrates that US Magnesium (i) received interruption voice messages on the mobile telephones for its two designated Interruption Contacts; (ii) received interruption text messages on both mobile telephones for its Interruption Contacts; (iii) that Mr. Rickenbach spoke directly with Mr. Swenson to confirm that Mr. Swenson had received the interruption notices; and (iv) received interruption emails from the Company, each of which was delivered to email addresses provided for Mr. Tucker and Mr. Swenson.²⁶

US Magnesium’s remaining objection to Fact Paragraph 21 centers on the statement that US Magnesium’s marketing agent also notified it of the interruption on January 6th. Notably, US

²⁶ See Rickenbach Testimony at 6:129-12:245 & Exhibits 1.6, 1.7 & 1.8; Swenson Testimony at 9: 176-10:204;11:227-239; Tucker Testimony at 3:63-4:73; US Magnesium Exhibits 6, 11.

Magnesium does not dispute that Exhibit 1.10 consists of emails from Matt Medura, its marketing agent, on January 6-7, 2017, informing US Magnesium of the interruption.²⁷ As such, the fact of the notice is undisputed. Whether that notice was sufficient notice under the Tariff is a legal, not a factual. But there is no dispute that US Magnesium received numerous interruption notices from the Company *and* its marketing agent, and apparently ignored them all.

ARGUMENT

A. US Magnesium Misinterprets Section 3.02 and Mischaracterizes the Company's Position.

US Magnesium's entire argument is premised on its flawed interpretation of the Section 3.02 of the Tariff and its mischaracterization of the Company's position. It correctly quotes part of Section 3.02 and notes that the language requires customers to "provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption."²⁸ Relying on this language, it argues that "[t]he structure and the plain language of the above-cited portions of DEU Tariff § 3.02 makes clear that DEU must use contact information provided by the customer for interruption notices to notify the customer of an interruption."²⁹ The Company does not disagree with this position. In fact, the Company used the very contact information provided by US Magnesium on the Customer Information Sheet to provide notice of the interruption on January 6, 2017. However, US Magnesium goes further— and that is where its interpretation breaks down.

1. Section 3.02 Does Not Impose the Requirements Claimed by US Magnesium.

US Magnesium contends that, for the Company's interruption notices to have been "proper" under Section 3.02, the Company had to have either (i) successfully provided the notice to *every* contact number or email address provided by US Magnesium, or (ii) provided the notice

²⁷ Rickenbach Testimony, Exhibit 1.10.

²⁸ Tariff § 3.02; Opposition at 15.

²⁹ Opposition at 15.

to the number US Magnesium subjectively expected to receive interruption notices.³⁰ These arguments find no support in Section 3.02.

Section 3.02 does not state that notice is only deemed effective if successfully made to every telephone number or email address provided by a customer. Indeed, such an interpretation would be unreasonable, as it would excuse an interruptible customer from the obligation to interrupt its usage even if that customer received the interruption notice through some other means.³¹ As is clear from Section 3.02, a customer who receives notice of an interruption through one or more of the numbers or email addresses it provided to the Company is required to interrupt its usage. That customer cannot avoid interruption by claiming that one of the methods of notice failed, when that customer had notice through other means.

Nor does Section 3.02 require the Company to deliver interruption notices to a particular contact point, such as a “Day Phone” number as US Magnesium suggests, unless the customer makes clear that is the only method that will provide immediate notice. That did not happen here. The Company sent the Customer Information Sheet to US Magnesium and asked it to confirm the names of one or more Interruption Contacts with their contact information.³² Under Section 3.02, US Magnesium was obligated to provide information that would allow the Company to immediately notify US Magnesium of an interruption.³³ In the email accompanying the Customer Information Sheet, the Company also informed US Magnesium that it would be notified of interruptions through telephone calls, texts and emails: “This tool is an electronic calling, texting and email system that sends simultaneous messages to ensure timely

³⁰ Opposition at 14-16.

³¹ See *Olympus Hills Shopping Ctr., Ltd. v. Smith’s Food & Drug Ctrs., Inc.*, 889 P.2d 445, 458 n.16 (Utah Ct. App. 1994) (“[C]ourts should avoid [an] unreasonable interpretation when [a] contract provision would be reduced to absurdity [.]”); *McNeil Eng’g & Land Surveying, LLC v. Bennett*, 2011 UT App. 423, ¶ 17, 268 P.3d 854 (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”) (citation omitted)).

³² See Rickenbach Testimony, Exhibits 1.1, 1.3.

³³ Tariff § 3.02.

communications, so it is important to keep your contact information updated and to notify us of any changes.”³⁴

US Magnesium responded to the Company’s request by returning the completed Customer Information Sheet, which designated two Mr. Swenson and Mr. Tucker as the Interruption Contacts.³⁵ For each man, US Magnesium provided an office telephone number and a mobile telephone number.³⁶ In addition, US Magnesium provided their email addresses.³⁷ Notably, US Magnesium did not designate that the identified mobile telephone numbers or email addresses could only be used during certain timeframes.³⁸ Nor did US Magnesium indicate that it expected to receive interruption notices through its “Day Phone” numbers, as it now claims. Indeed, US Magnesium provides no evidence to support this claim. By providing each of these contact points, US Magnesium agreed (under Section 3.02) that notice to any one of them would “enable[] the Company to immediately notify [US Magnesium] of a required interruption.”³⁹

2. US Magnesium Mischaracterizes the Company’s Position.

Lacking any textual or factual support for its position, US Magnesium resorts to mischaracterizing the Company’s position regarding Section 3.02, so that it can argue against that misrepresented position. Specifically, US Magnesium claims: “DEU incorrectly asserts that it satisfies its obligation to provide proper notice of an interruption to its customer by utilizing *any* contact information it has for that customer—rather than using the contact information provided to DEU by the customer for the specific purpose of receiving notices of interruption.”⁴⁰

This statement is untrue.

³⁴ Rickenbach Testimony, Exhibit 1.3.

³⁵ US Magnesium Exhibit 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Opposition at 1; *see also id.* at 16.

The Company has never taken the position that notice is effective if provided to just *any contact information* the Company may have for the customer, and US Magnesium cites to no place where the Company has taken that position. As US Magnesium readily concedes, the Company delivered the Customer Information Sheet to US Magnesium for the specific purpose of having US Magnesium designate the people it wanted to receive interruption notices and so that it could provide the telephone numbers and email addresses that should be used for that purpose.⁴¹ That is precisely what occurred here. The Company successfully provided notice of the interruption through seven different means, each of which had been provided by US Magnesium on the Customer Information Sheet (two messages to identified mobile telephone numbers, texts to those telephone numbers, emails to both Mr. Tucker and Mr. Swenson, and a telephone call directly to Mr. Swenson). Section 3.02 does not require more than this.

US Magnesium also contends that Dominion Energy “incorrectly asserts that DEU Tariff § 3.02 does not mandate the manner in which DEU must notify customers of an interruption.”⁴² However, US Magnesium has itself said the same thing, at least it did in its own Motion for Summary Judgment (“US Mag Motion”). In its Statement of Material Undisputed Facts supporting that motion, US Magnesium states: “DEU’s Tariff does not state—either in Section 3.02 or elsewhere—how DEU must notify customers in the event of any interruption.”⁴³ US Magnesium’s about-face in its opposition to the Motion is contrary to that, and, as explained above, is not supported by the language of Section 3.02.

B. The Company Provided US Magnesium With “Notice” Under the Tariff.

The parties do not dispute that the Company’s automated notification system cannot dial through to extensions. As such, the parties also do not dispute that two telephone calls made by

⁴¹ Rickenbach Testimony, Exhibits 1.1, 1.3; Swenson Testimony at 6:114-22 & US Magnesium Exhibit 3.

⁴² Opposition at 14.

⁴³ US Mag Motion at ix (Paragraph 19).

Dominion Energy's notification system on January 6, 2016 did not reach extensions provided by US Magnesium. But there is no dispute that US Magnesium received notice of the interruption through seven other means. In its opposition, US Magnesium desperately tries to argue those notifications were insufficient for one reason or another. However, each of its arguments is unavailing.

1. US Magnesium Received Notice of the Interruption Through Calls and Texts to Identified Mobile Telephone Numbers.

US Magnesium contends that the telephone call and text to Mr. Tucker's mobile telephone number was not proper notice because "US Magnesium personnel are not permitted to carry cell phone at the plant for security reasons" and that for interruptions during daytime operating hours, it expected to receive a call on the "Day Phone" numbers of the Customer Information Sheet.⁴⁴ US Magnesium also argues that Mr. Tucker did not see the text message or listen to the voice mail message on his mobile telephone "until he returned from the plant at the end of the day on January 6, 2017", and that "Mr. Swenson was traveling on the morning of January 6" and also did not immediately see the text message or listen to the voice message.⁴⁵ None of these arguments has merit.

First, US Magnesium listed Mr. Tucker's mobile telephone number on the Customer Information Sheet as a point of contact in the event of an interruption.⁴⁶ US Magnesium never informed Dominion Energy that mobile telephones are not allowed in the plant, nor did it inform the Company of Mr. Tucker's hours at the plant.⁴⁷ Thus, the Company would have had no reason to assume that Mr. Tucker's mobile telephone was not a reliable method of notice.

⁴⁴ Opposition at 20.

⁴⁵ *Id.* at 21.

⁴⁶ Rickenbach Testimony, Exhibit 1.1.

⁴⁷ Affidavit of Bruce Rickenbach ¶ 4, attached as Exhibit A to Dominion Energy's Opposition to US Magnesium's Motion for Summary Judgment.

Second, US Magnesium *did not indicate* on the Customer Information Sheet that the mobile telephone numbers for Mr. Tucker or Mr. Swenson should only be used during certain hours or at times other than in the daytime.⁴⁸ Indeed, US Magnesium did not provide any “Night Phone” number on the Customer Information Sheet.⁴⁹ It is undisputed that US Magnesium specifically identified both numbers as numbers that could be used for interruption notices, the Company sent texts to and left voice messages on both numbers notifying US Magnesium of the interruption. As such, if Mr. Tucker’s or Mr. Swenson’s mobile telephone numbers were not a reliable means of providing interruption notices, US Magnesium violated Section 3.02 by failing to “provide, and update as necessary, contact information that enables the Company to *immediately notify* a customer of a required interruption”⁵⁰

Third, Mr. Swenson was not at the plant on January 6, 2017, and acknowledged during his call with Mr. Rickenbach that he had received the messages to his mobile telephone number.⁵¹ Thus, even if Mr. Tucker was not able to receive notices on his mobile telephone, Mr. Swenson was.

Fourth, Section 3.02 states that “[u]pon notice from the Company, interruptible customers are required to interrupt as soon as operationally possible.”⁵² The Company began providing its notices during the morning of January 6, 2017. The fact that Mr. Tucker or Mr. Swenson did not look at their texts or listen to their messages until later is irrelevant. A customer could always seek to avoid the obligation to interrupt by claiming that it did not see an interruption notice until later. It is for this reason that Section 3.02 requires customers to provide contact information that will enable the Company to *immediately* contact the customer regarding interruptions.

⁴⁸ *Id.* at ¶¶ 4-5; Rickenbach Testimony, Exhibit 1.1.

⁴⁹ Rickenbach Testimony, Exhibit 1.1.

⁵⁰ Tariff § 3.02; Motion at 4-7 (emphasis added).

⁵¹ Swenson Testimony at 11:227-39.

⁵² Tariff § 3.02.

Furthermore, it is notable that, even after Mr. Tucker and Mr. Swenson claim to have seen the texts and listened to the messages, they did nothing to cause US Magnesium to interrupt its usage.

2. US Magnesium Cannot Claim Insufficient Notice Because It Did Not Recognize the Email Addresses or Text Numbers from Which Interruption Notices Were Sent.

Similarly, US Magnesium's claim that it did not recognize the text numbers or the email addresses for the texts and the emails it received is also unavailing.⁵³ US Magnesium acknowledges that the texts Mr. Tucker and Mr. Swenson received stated: "Questar Gas has called system capacity and supply reduction interruptions. Please review your email for more details."⁵⁴ Whether Mr. Tucker and Mr. Swenson recognized the text number or not, they were put on notice that the Company had called an interruption, which, incidentally, had been confirmed to them by their gas marketer.⁵⁵ Moreover, had they gone to their emails, those emails reiterated that they had been sent by Questar, and they would have noticed a full-page email notifying them in clear terms that the Company had ordered an interruption and that US Magnesium was required to take immediate action.⁵⁶ Section 3.02 does not require the Company to send notices from email addresses or text numbers that are recognizable to each customer. In fact, such a requirement would be unwieldy and unworkable.⁵⁷

⁵³ Opposition at 21.

⁵⁴ Swenson Testimony at 9:178-82.

⁵⁵ Rickenbach Testimony, Exhibit 1.10.

⁵⁶ See Rickenbach Testimony, Exhibits 1.6, 1.7; US Magnesium Exhibits 6, 11.

⁵⁷ US Magnesium also argues that the email notifications it received cannot constitute notice of the January 2017 interruption because US Magnesium did not list emails on the Customer Information Sheet as a means to notify it of interruptions. However, as noted above, the Company notified US Magnesium in the email accompanying the Customer Information Sheet that the information provided would be used for interruption notices and that the automatic notification system would send notice through email addresses provided. It is undisputed that the Customer Information Sheet does provide email addresses for Mr. Tucker and Mr. Swenson. See Rickenbach Testimony, Exhibit 1.1.

3. Mr. Rickenbach's Call with Mr. Swenson Absolutely Provided Notice of the Interruption.

Finally, US Magnesium's contention that Mr. Rickenbach's direct call with Mr. Swenson was not notice under Section 3.02 is nothing more than spin. US Magnesium does not quote Mr. Swenson's testimony, it paraphrases it. In his testimony, he confirm that Mr. Rickenbach was calling him about an interruption notice and confirmed that he had received the notice:

Bruce Rickenbach of Questar Gas/DEU contacted me on my cell phone on January 6, 2017 while I was driving to California. He seemed very concerned about whether the notification system had worked *and I told him I got his message . . .*⁵⁸

In its brief, US Magnesium finds it "curious" that Mr. Rickenbach called Mr. Swenson's mobile number instead of the Mr. Swenson's or Mr. Tucker's land lines at the plant.⁵⁹ But this speculation is irrelevant. As an initial matter, Mr. Rickenbach testified that he called Mr. Swenson's cellphone number as a courtesy.⁶⁰ This was not unusual because Mr. Swenson had been Mr. Rickenbach contact with US Magnesium for many years.⁶¹ But even setting this aside, why Mr. Rickenbach chose that number is irrelevant. The point is that he spoke directly with Mr. Swenson and that Mr. Swenson confirmed that he had received the interruption notice. That is all that matters. Whatever subjective belief Mr. Swenson may have about Mr. Tucker getting separate notice, Mr. Swenson *was on notice* and was required to ensure the plant interrupted its usage.

CONCLUSION

For the foregoing reasons, Dominion Energy respectfully requests that the Commission grant its Motion for Summary Judgment.

⁵⁸ Swenson Testimony at 11:229-32 (emphasis added).

⁵⁹ Opposition at 22.

⁶⁰ Rickenbach Testimony at 10:220-11:221; 12:262-64.

⁶¹ *Id.* at 12:262-64.

DATED: February 23, 2018

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CERTIFICATE OF SERVICE

This is to certify that on February 23, 2018 a true and exact copy of the foregoing

REPLY MEMORANDUM IN SUPPORT OF DOMINION ENERGY UTAH'S MOTION

FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM was emailed to the

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