



201 South Main, Suite 2300  
Salt Lake City, Utah 84111

September 28, 2011

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Julie P. Orchard  
Commission Secretary

Re: In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC (Refinery)

Rocky Mountain Power hereby submits for filing to the Public Service Commission of Utah ("Commission") an original and five (5) copies of its Application for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC.

It is respectfully requested that all formal correspondence and Staff requests regarding this matter be addressed to:

By E-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 800  
Portland, OR 97232

Informal inquiries may be directed to Dave Taylor at (801) 220-2923.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey K. Larsen /ca". The signature is written in a cursive style.

Jeffrey K. Larsen  
Vice President, Regulation

cc: Service List

Daniel E. Solander (11467)  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
Telephone: (801) 220-4014  
Facsimile: (801) 220-3299

Attorney for Rocky Mountain Power

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of	)	
Rocky Mountain Power	)	
for Approval of the Power Purchase	)	DOCKET NO. _____
Agreement between PacifiCorp	)	
and Kennecott Utah Copper LLC	)	ROCKY MOUNTAIN POWER
	)	

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Pursuant to Utah Code Ann. § 54-12-2, PacifiCorp, doing business in Utah as Rocky Mountain Power (“Rocky Mountain Power” or “PacifiCorp” or “Company”) hereby applies for an order approving the Power Purchase Agreement (“Agreement”) between PacifiCorp and Kennecott Utah Copper LLC (“Kennecott”) dated September 13, 2011. In support of its Application, Rocky Mountain Power states as follows:

1. Rocky Mountain Power is a public utility in the state of Utah and is subject to the jurisdiction of the Public Service Commission of Utah with regard to its rates and service. Rocky Mountain Power also provides retail electric service in the states of Idaho and Wyoming. As a “purchasing utility,” as that term is used in Utah Code Ann. §54-12-2, PacifiCorp is obligated to purchase power from qualifying facilities pursuant to the Public Utility Regulatory Policies Act of 1978, Utah Code Ann. §54-12-1, *et seq.*, and the Commission’s orders. Under the Agreement, Kennecott represents itself to be a

qualifying facility, and agrees to provide PacifiCorp, upon request, with evidence to show its qualifying facility status.

2. Communications regarding this Application should be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[Daniel.Solander@pacificorp.com](mailto:Daniel.Solander@pacificorp.com)  
[Dave.Taylor@pacificorp.com](mailto:Dave.Taylor@pacificorp.com)

By mail: Data Request Response Center  
Rocky Mountain Power  
825 NE Multnomah St., Suite 800  
Portland, OR 97232

Dave Taylor  
Rocky Mountain Power  
201 South Main, Suite 2300  
Salt Lake City, UT 84111  
Telephone: (801) 220-2923  
Facsimile: (801) 220-2798

Daniel E. Solander  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
Telephone: (801) 220-4014  
Facsimile: (801) 220-3299

Informal inquiries may be directed to Dave Taylor, Utah Regulatory Affairs Manager, at (801) 220-2923.

3. In Docket No. 03-035-14, *In the Matter of the Application of PacifiCorp for Approval of an IRP-Based Avoided Cost Methodology for QF Projects larger than One Megawatt*, the Commission issued a series of orders, which established avoided capacity and energy cost payments for purchases from QF projects larger than one megawatt, such as Kennecott's, under contracts with PacifiCorp with terms up to 20 years.

4. The Agreement provides for the sale to PacifiCorp of energy to be generated by Kennecott up to 7.54 MW, from a waste heat-fired cogeneration facility constructed by Kennecott and located in Salt Lake City, Utah (the “Facility”). A copy of the Agreement is attached to this Application as Exhibit A. The Agreement is for a term of 12 months: January 1, 2012 through December 31, 2012.

5. The purchase prices set forth in the Agreement were calculated using the methodology approved in Docket No. 03-035-14.

6. The Facility is located near Magna, UT in an area served by Rocky Mountain Power. All interconnection requirements have been met and the Facility is fully integrated with the Rocky Mountain Power system.

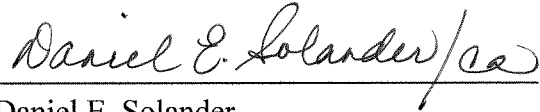
7. The Agreement constitutes a “New QF Contract” under the PacifiCorp Interjurisdictional Cost Allocation Protocol (“Protocol”), previously filed with the Commission pursuant to a stipulation in Docket No. 02-035-04. According to the terms of the Protocol, the costs of the QF provisions would be allocated as a system resource, unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources.

8. The existing QF Power Purchase Agreement, dated October 6, 2010 (the “2011 Agreement”) between PacifiCorp and Kennecott expires on December 31, 2011. Therefore, the parties desire that no time lapse between the expiration of the 2011 Agreement and the approval of the Agreement for which approval is sought in this Application.

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission issue an order approving the Agreement and find the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 28<sup>th</sup> day of September, 2011.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel E. Solander" followed by a stylized flourish or initials.

Daniel E. Solander  
Attorney for Rocky Mountain Power

## CERTIFICATE OF SERVICE

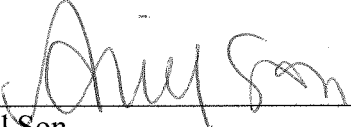
I hereby certify that on this 28<sup>th</sup> day of September, 2011, I caused to be served via electronic mail, a true and correct copy of the foregoing Application of Rocky Mountain

Power to the following:

Trisha Schmid  
Assistant Attorney General  
Division of Public Utilities  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Paul Proctor  
Assistant Attorney General  
Committee of Consumer Services  
500 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

F. Robert Reeder  
Parsons Behle &, Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
[bobreeder@parsonsbehle.com](mailto:bobreeder@parsonsbehle.com)

  
\_\_\_\_\_  
Ariel Son  
Coordinator, Regulatory Operations

NON-FIRM POWER PURCHASE AGREEMENT

BETWEEN

KENNECOTT UTAH COPPER L.L.C.

AND

PACIFICORP

THIS AGREEMENT, entered into this 13<sup>th</sup> day of September 2011, is by and between Kennecott Utah Copper L.L.C. ("Seller") and PacifiCorp (each a "Party" and collectively, the "Parties").

RECITALS

Seller owns, operates, and maintains a waste heat-fired steam cogeneration facility for the generation of electric power located within the State of Utah, in and about the town of Magna, Utah and located within the County of Salt Lake with a Nameplate Capacity Rating of 7.54 megawatt ("MW") and expected average monthly output of about 5.4MW ("Facility"); and

Seller intends to operate the Facility as a "qualifying facility," as such term is defined in Section 3.2.6 below; and

Seller estimates that the monthly average amount of Delivered Energy to be delivered by the Facility to PacifiCorp is 3,900 megawatt-hours ("MWh") pursuant to the scheduled maintenance as shown in Exhibit D hereto; and

Seller shall sell and PacifiCorp shall purchase the Delivered Energy from the Facility in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 "Billing Period" means the time period between PacifiCorp's reading of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may or may not coincide with calendar months.

1.2 "Environmental Attributes" means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, other than the energy or electricity itself, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance

to the air, soil or water or the use of renewable energy or other differentiated energy efficiency motive sources. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) renewable energy credits and efficiency credits.

1.3 "Commission" means the Public Service Commission of Utah.

1.4 "Contract Year" means a twelve (12) month period commencing hour ending 1AM Mountain Prevailing Time ("MPT") on January 1 and ending midnight MPT on December 31 of the calendar year.

1.5 "Delivered Energy" shall have the meaning ascribed thereto in Section 4.2 of this Agreement.

1.6 "Facility" means Seller's waste-heat and natural gas-fired steam cogeneration facility as described in the Recitals and Exhibit A of this Agreement.

1.7 "Generation Interconnection Agreement" means the generation interconnection agreement(s), identified in Exhibit C, entered into separately between Seller and PacifiCorp's transmission department, providing for the construction and operation of the interconnection facilities at the Point of Delivery.

1.8 "Initial Delivery Date" is defined in Section 4.1 of this Agreement.

1.9 "Nameplate Capacity Rating" means the maximum capacity of the Facility, expressed in MW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in Exhibit A.

1.10 "Net Output" means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. In the event that Seller elects to offset its own power usage instead of selling to PacifiCorp under this Agreement, then Net Output shall be reduced by the amount of energy and capacity self supplied.

1.11 "Point of Delivery" means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's transmission system, as specified in the Generation Interconnection Agreement and in Exhibit B.

1.12 "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not



available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.13 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.14 "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for operation and maintenance of the Facility including without limitation those set forth in Exhibit C.

1.15 "Scheduled Maintenance Periods" means those times, as reflected in Exhibit D, during which the Facility is shut down for routine maintenance with the advance notice to PacifiCorp as provided in Section 6.2.

## SECTION 2: TERM

2.1 Effective Date. This Agreement shall become effective upon the occurrence of both: (1) execution by both Parties; and (2) after approval by the Commission whereby the Commission determines that the prices to be paid for energy and capacity sold to PacifiCorp are just and reasonable and in the public interest ("Effective Date"). For purposes of inter-jurisdictional cost allocation, this Agreement constitutes a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol and, as such, the costs of those QF provisions are allocated as a system resource unless any portion of those costs exceed the cost PacifiCorp would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the State of Utah. The rates, terms and conditions in this Agreement are in accordance with the rates, terms and conditions approved by the Commission in Docket No. 03-035-14 for purchases from qualifying facilities. In addition, for the purposes of inter-jurisdictional cost allocation, PacifiCorp represents that the costs of this Agreement do not exceed the costs PacifiCorp would have otherwise incurred acquiring resources in the market that are defined as "Comparable Resources" in Appendix A to the Inter-Jurisdictional Cost Allocation Revised Protocol. In the event that the Commission order approving this Agreement contains any condition that is materially adverse to either Party, the Party adversely impacted by the condition may terminate this Agreement by providing the other Party notice within ninety (90) days of the entry of the Commission's order.

2.2. Expiration Date. Except as otherwise provided herein, this Agreement shall terminate at 11:59:59 p.m. MPT on December 31, 2012.

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a Utah Limited Liability Company having a place of business within the State of Utah, in and about the town of Magna, Utah and located within the County of Salt Lake.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's directors and officers/other management have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a "qualifying facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PacifiCorp prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may, at Seller's sole expense, require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Utah stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

#### SECTION 4: DELIVERY OF POWER

4.1 Commencing at 00:00:01 a.m. MPT on January 1, 2012 ("Initial Delivery Date") and continuing through the term of this Agreement, Seller shall sell and PacifiCorp shall purchase the Delivered Energy from the Facility at the Point of Delivery as more particularly described in Section 4.2 hereto.

4.2 Commencing on the Initial Delivery Date, Seller shall have the option, but not the obligation, to provide and deliver Net Output to PacifiCorp at the Point of Delivery, on a non-firm basis, during all hours, HE0100 through HE2400 Mountain Prevailing Time ("MPT"), Monday through Sunday, from the Facility (the amount of energy that Seller actually delivers to PacifiCorp from the Facility, not to exceed 7.54MW, shall be referred to herein as the ("Delivered Energy")). Seller shall not deliver Delivered Energy at a rate exceeding the Nameplate Capacity Rating on an hour average basis. PacifiCorp shall take all Delivered Energy at the Point of Delivery.

4.3 Seller shall not make any sales of any portion of the Net Output to parties other than PacifiCorp through the term of this Agreement. However, Seller may elect to offset its own power usage instead of selling to PacifiCorp under this Agreement, and the Net Output shall be reduced by the amount of energy and capacity self supplied.

4.4 Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Nameplate Capacity Rating through any means including, but not limited to, replacement of, modification of, or addition of existing equipment, except with the written consent of PacifiCorp, provided that, in the event that Seller desires to increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Nameplate Capacity Rating and PacifiCorp has failed, within ten (10) days of notice of such desire to PacifiCorp by Seller, to give its unqualified written consent thereto, then Seller may, notwithstanding any other provision of the Agreement, immediately terminate this Agreement whereupon Seller shall have no further obligation to PacifiCorp hereunder and shall have no liability to PacifiCorp for any costs or losses or liabilities related to the termination of this Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to PacifiCorp's interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with PacifiCorp's system, or any increase in generating capability of the Facility, or any increase of delivery of Nameplate Capacity Rating from the Facility, shall be borne by Seller.

#### SECTION 5: PURCHASE PRICES

PacifiCorp shall pay Seller for the Delivered Energy to be calculated as follows:

$$\text{Payment (\$)} = \text{Energy Price (\$/MWh)} \times \text{the Delivered Energy (MWh)} \times 1.0454$$

"Energy Price" is the price set forth in Exhibit E for the month in which the Delivered Energy was delivered.

The 1.0454 adjustment factor accounts for avoided line losses. This adjustment factor is based on a rate of 5.00% for real power losses for voltage of 46 kV or greater as set forth in Schedule 10 of PacifiCorp's proposed revised Open Access Transmission Tariff (OATT) filed with the Federal Energy Regulatory Commission (FERC) on May 26, 2011 in Docket No. ER11-3643-000. In the event FERC approves a different line loss rate for real power losses for voltage of 46 kV or greater with an effective date during the term of this Agreement, PacifiCorp shall re-calculate the adjustment factor for avoided line losses consistent with the FERC approved line loss rate for real power losses for voltage of 46 kV or greater. The re-calculated adjustment factor for avoided line losses shall apply from the FERC effective date for such approved line loss rate.

#### SECTION 6: OPERATION AND CONTROL

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety

Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output or Delivered Energy from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement.

6.2 Seller may cease operation of the entire Facility or individual units, if applicable, for Scheduled Maintenance Periods not to exceed a total of sixty (60) days each Contract Year at such times as are provided in the monthly maintenance schedule set forth as Exhibit D.

6.3 If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PacifiCorp of the necessity of such unscheduled maintenance, the time when such shutdown has occurred or will occur and the anticipated duration of such shutdown. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours.

6.4 Delivered Energy shall be provided per Seller's schedule. Seller shall provide Buyer its estimated delivery pattern from the Seller's qualifying facility on the first business day of the month or as soon thereafter as practicable, for the following calendar month. Seller shall provide such schedules and schedule changes to PacifiCorp's scheduling personnel per Section 22 using the best information available, but it is understood that the delivery pattern is only an estimate and, therefore, shall not be binding on Seller.

6.5 Unit Availability. Seller offers no guarantee of unit availability; however, Seller agrees to notify PacifiCorp of unplanned unit outage and will use reasonable commercial efforts to keep the Facility operating at highest availability for providing Delivered Energy to PacifiCorp.

## SECTION 7: FUEL/MOTIVE FORCE

7.1 PacifiCorp shall have no obligation to procure or pay for any fuel that might be used in the operation of the Facility.

7.2 Seller shall maintain responsibility, for managing, accounting for, or reporting greenhouse gas emissions, if any, including but not limited to carbon dioxide emissions from the Facility (including from Net Output or Delivered Energy), and conversely, Seller shall not be responsible for managing, accounting for, or reporting greenhouse gas emissions including but not limited to carbon dioxide emissions from generation facilities associated with Seller's purchase of power from PacifiCorp to replace Net Output or Delivered Energy from the Facility otherwise not available to Seller as a result of this Agreement.

7.3 Seller shall maintain the ownership of, or rights to, any and all Environmental Attributes, if any, resulting from energy generated by the Facility during the term of this Agreement.

#### SECTION 8: [RESERVED]

#### SECTION 9: METERING

9.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement.

9.2 Metering shall be performed at the location and in the manner specified in Exhibit B and the Generation Interconnection Agreement.

9.3 The metering equipment will be inspected, tested, repaired and replaced as provided in the Generation Interconnection Agreements. If any of the inspections or tests discloses Inaccurate Metering as defined in the Generation Interconnection Agreements, a correction will be made as provided in those agreements. Any correction in billings or payments resulting from a correction in the meter records shall be settled and netted in accordance with Section 10.

9.4 To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Delivered Energy to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties or otherwise.

10.2 In the event that a portion of the bill or adjustment arising hereunder is disputed, payment of the portion not in dispute shall be made when due. Seller and PacifiCorp shall seek to make a determination on any disputed amount within sixty (60) days after issuance of Seller's notice of dispute. Nothing herein shall be construed to preclude a Party from resorting to any remedy available at law or in equity.

10.3 Any amounts from PacifiCorp to Seller owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## SECTION 11: DEFAULT AND REMEDIES

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to breach of Section 4.3 and failure to make a payment when due or) or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice;

11.1.2 Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within sixty (60) days after it is filed;

11.1.3 Seller's failure to cure any default under the Generation Interconnection Agreement within the time allowed for a cure under such agreement.

11.2 In the event of any default hereunder that is not cured in the manner provided for in the Agreement, the non-defaulting Party may terminate this agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

## SECTION 12: INDEMNIFICATION, LIABILITY AND INSURANCE

12.1 Indemnities.

12.1.1 Seller shall release, indemnify, protect, and hold harmless PacifiCorp, its directors, officers, agents, representatives, successors, and assigns from and against any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with, the energy delivered by Seller hereunder to and at the Point of Delivery, and facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 PacifiCorp shall release, indemnify, protect, and hold harmless Seller, its directors, officers, agents, representatives, successors, and assigns from and against any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller hereunder after

the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

12.2 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 Neither party shall be liable to the other party for special, punitive, indirect or consequential damages, whether arising from contract, tort (including negligence), strict liability, or otherwise.

12.4 Without limiting any liabilities or any other obligations of either Party, each Party shall comply with all applicable worker's compensation and employer's liability acts and shall furnish a certificate of insurance, in a form reasonably satisfactory to the other Party, prior to connection of the Facility to PacifiCorp's electric system.

12.5 Maintenance of Insurance Coverage. Without limiting any liabilities or any other obligations of Seller, each Party shall, prior to connection of the Facility to PacifiCorp's electric system, secure and continuously carry with insurers acceptable to PacifiCorp (which will not be unreasonably withheld), or self insure, the following insurance coverage:

12.5.1 Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles, if any, whether owned, hired or non-owned, assigned to or used in connection with this Agreement.

12.5.2 Employers' Liability insurance with a minimum limit of \$ 1,000,000.

12.5.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$ 1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement except as provided under Excess Umbrella Liability below.

12.5.4 Excess Umbrella Liability insurance with a single limit of at least \$10,000,000 per occurrence in excess of the limits of insurance provided above required to bring the sum of Commercial General Liability and Excess Umbrella Liability to \$11,000,000.



12.5.5 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming the other Party, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

12.5.6 All liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of the other Party and that any other insurance maintained by the other Party is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to the other Party if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to the other Party if canceled for any other reason. A certificate in a form satisfactory to the other Party certifying to the issuance of such insurance, shall be furnished to the other Party. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. Insurance coverage provided on a "claims-made" basis shall be maintained by each Party for a minimum period of five (5) years after the completion of this Agreement.

12.5.7 Each Party, at its option, may self-insure for any or all of the coverage described above. In the event and to the extent a Party so elects, that Party shall advise the other Party in writing. For all such self-insurance maintained by a Party, that Party agrees to provide the other Party all the benefits that would otherwise be available and provided under an insurance policy in accordance with the requirements set forth above in this Section 12.5, including but not limited to defense of claims.

#### SECTION 13: FORCE MAJEURE

13.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

13.1.1 the non-performing Party shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and,

13.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and,

13.1.3 the non-performing Party uses its reasonable commercial efforts to remedy its inability to perform.

13.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

13.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

13.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six months after the occurrence of the event.

#### SECTION 14: REGULATORY TERMINATION

PacifiCorp may terminate this Agreement if Seller (i) suspends operations at the Facility for more than 30 days as the result of a regulatory or legal action by either the State of Utah or the United States Environmental Protection Agency which has become final without further appeal or (ii) loses its QF certification.

#### SECTION 15: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### SECTION 16: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 17: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid,

illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### SECTION 18: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### SECTION 19: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and maintaining thereafter copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

#### SECTION 20: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### SECTION 21: ENTIRE AGREEMENT

21.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Delivered Energy from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

#### SECTION 22: NOTICES

22.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

**To PacifiCorp:**

**All Notices:**

Street: 825 NE Multnomah Street  
City: Portland, OR 97232  
Attn: Contract Administration, Suite 600  
Phone: (503) 813 - 5952  
Facsimile: (503) 813 - 6291  
Duns: 00-790-9013  
Federal Tax ID Number: 93-0246090

**Invoices:**

Attn: Back Office, Suite 600  
Phone: (503) 813 - 5578  
Facsimile: (503) 813 - 5580

**Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813 - 6265

**Payments:**

Attn: Wholesale Sales  
PO Box 5504  
Portland, OR 97228

**Wire Transfer:**

To be provided by PacifiCorp to  
Kennecott in separate letter

**Credit and Collections:**

Attn: Credit Manager, Suite 400  
Phone: (503) 813 - 5684  
Facsimile: (503) 813 - 5609

**With additional Notices of an Event of  
Default or Potential Event of Default  
to:**

(same street address, above)  
Attn: Dean S. Brockbank, Esq.  
Phone: (801) 220-4568  
Facsimile: (801) 220-3299

**To Kennecott:**

**All Notices:**

Street: 4700 Daybreak Parkway  
City: South Jordan, UT 84095  
Attn: Ray Gottling  
Phone: 801-569-7110  
Facsimile: 801-569-6688  
Duns:  
Federal Tax ID Number: 1331-08-078

**Invoices:**

Attn: Aaron Walkoviak  
Street: 4700 Daybreak Parkway  
City: South Jordan, Utah 84095  
Phone: 801-448-2521  
Facsimile: 801-204-2899

**Scheduling:**

Attn: Ray Gottling  
Phone: 801-569-7110  
Facsimile: 801-569-6688

**Payments**

Rio Tinto Accounts Payable  
4700 Daybreak Parkway  
South Jordan, UT 84095

**Wire Transfer:**


To be provided by Kennecott to PacifiCorp  
in separate letter

22.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 22.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PACIFICORP

DC

By:   
Name: Bruce Grawford  
Title: Director, Short-term Operations

KENNECOTT UTAH COPPER L.L.C.

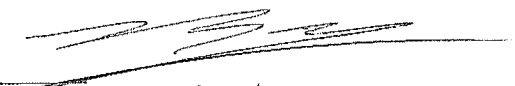
By:   
Name: BRENDAN RYAN  
Title: VP PROJECTS + EXPANSION

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a Taurus 70-10301S Axial natural gas-fired turbine from Solar Turbines equipped with a natural gas/waste heat boiler from CB Energy. This installation is for industrial purposes at KUC Refinery facilities. The CHP unit will provide electricity and provide a means to supply process steam previously provided by existing natural gas boilers.

Thermal energy in the form of waste heat off the turbine will provide the new boiler with energy to produce process steam. The steam is used to maintain process fluid temperatures that are heated through a plate exchanger to provide heat to equipment in the KUC Refinery facilities. The electricity generated will provide the KUC Refinery with power and reduce the amount of power imported from the utility grid.

**CHP System Process Description**

The primary energy input is natural gas for the duct burner and turbine. Waste heat that comes off the turbine provides heat for the boiler to meet the Refinery's steam requirements. The duct burner is a back up source to waste heat from the turbine and has been sized to meet peak steam requirements.

Under normal operating conditions KUC can use the electrical energy and the steam for the Refinery process. This allows the CHP Unit to run 24/7 at maximum efficiency with low emissions. A 9ppm NOx burner was purchased with the unit to reduce emissions.

There are three major components for the CHP Unit:

1. The turbine which will run 24/7 based on a KW set point or a thermal following mode (ie. run at a level needed to meet steam demand at the time). The turbine is natural gas fired and is used to turn the generator and produce waste heat exhaust sufficient to generate up to 31,000 PPH of steam in the HRSG (boiler).
2. The Generator can provide 6.2 MW @59 F with 100% loading. The unit is sized to match the steam requirements at the Refinery. It will operate in steam demand mode most of the time. The generator will be capable of sending electricity to the local grid. However, KUC will also be able to use all the power the CHP can generate. The generator is sized to run at 100 % capacity most of the time which provides the highest efficiency.

The Generator system provides power to the existing refinery's main 15kV switchgear at breaker #29. The new generating system is composed of a new line-up of 15kV switchgear, three transformers, one new five section MCC and one grounding resistor for the 750kva transformer.

This switchgear feeds the following parasitic loads:

- One new 750kva 13.8kV to 480 V transformer connected to a new MCC (Motor Control Center). The core losses are 7.2kw.
- This MCC has a connected load of 665 kw which feeds most of the required ancillary load of the generator.
- The second breaker connects to a 13.8kV to 120/240 V, 50kva transformer which connects to a Lighting panel. 40kw capacity
- The third breaker connects to the 13.8kV Generator.
- The fourth 13.8kV breaker connects to a new 13.8kV to 480V, 250kva transformer which will connect to 3 new 60hp natural gas compressors. One or two operating at a time. 97kw load
- The fifth 13.8kV cabinet has the utility metering.
- Cable losses and exciter losses are minimal.

3. The natural gas-fired duct burner is sized to produce 70,000 PPH of steam in the HRSG boiler to meet the maximum steam requirements of the Refinery facility when waste heat from the turbine is not available due to periods of testing or maintenance. However, the primary intent is to use the waste heat from the turbine to produce steam and maximize the efficiency of the CHP Unit.

Location of the Facility: The Facility is located at the Kennecott Refinery in the vicinity of Magna in Salt Lake County, Utah.



EXHIBIT B  
POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES

Point of Delivery is generally described in the Generation Interconnection Agreement dated October 21, 1988 as the "Point of Interconnection", including a one line drawing and description of Generating Station, Generation Interconnection Facilities, and PacifiCorp Interconnection Facilities. Specific facilities are:

(i) Generating Station: Seller's 7.54 MW natural gas turbine generation station including electric generators, step-up transformers and appurtenant facilities, located at Kennecott's Refinery in Magna, Utah.

(ii) Generation Interconnection Facilities: Seller's existing electrical facilities interconnecting the Generating Station with PacifiCorp's 138 kV transmission line from PacifiCorp's Terminal Substation and facilities provided and installed by Seller pursuant to the Generation Interconnection Agreement.

(iii) PacifiCorp Interconnection Facilities: PacifiCorp's existing 138 kV transmission facilities connecting the Seller's Interconnection Facilities with PacifiCorp's transmission system and communication and metering facilities installed pursuant to the Generation Interconnection Agreement.

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

INTERCONNECTION AND OPERATIONS AGREEMENT BETWEEN UTAH POWER  
AND LIGHT COMPANY AND KENNECOTT CORPORATION dated 21 October 1988

GENERATION INTERCONNECTION FACILITIES AGREEMENT between ROCKY  
MOUNTAIN POWER and KENNECOTT UTAH COPPER LLC.

PROOF OF COMPLIANCE WITH SECTION 12.5.7. (SELF-INSURANCE  
REQUIREMENTS)

PROOF OF QF SELF-CERTIFICATION

EXHIBIT D  
MONTHLY MAINTENANCE SCHEDULES

Scheduled Maintenance Periods during the Term are tentatively scheduled for:

- KUC anticipates monthly hydraulic filter changes can be performed while the unit is online. KUC anticipates up to four (4) days of semiannual inspection/maintenance outage to occur in May, and up to six (6) days of annual inspection/maintenance to occur in October or November.

These schedules are tentative and may be adjusted by Seller with thirty (30) day written notice to PacifiCorp.

EXHIBIT E  
PRICING (\$/MWh)

“HLH” means Monday through Saturday, 7:00 AM MST to 11:00 PM MST, excluding NERC holidays.

“LLH” means all hours that are not HLH.

Month in 2012	HLH	LLH
January	\$37.26	\$28.05
February	\$37.54	\$27.97
March	\$36.83	\$26.39
April	\$36.42	\$21.89
May	\$31.30	\$19.31
June	\$32.74	\$17.86
July	\$45.70	\$29.36
August	\$43.71	\$25.84
September	\$43.21	\$25.92
October	\$38.24	\$28.13
November	\$39.29	\$28.95
December	\$40.94	\$29.14