

WILLIAM J. EVANS (5276)  
VICKI M. BALDWIN (8532)  
Parsons Behle & Latimer  
Attorneys for Kennecott Utah Copper LLC and  
Tesoro Refining & Marketing Company LLC  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

---

**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

---

In the Matter of Rocky Mountain Power's  
Proposed Revisions to Electric Service Schedule  
No. 37, Avoided Cost Purchases from  
Qualifying Facilities.

Docket No. 14-035-T04

**COMMENTS ON ROCKY MOUNTAIN  
POWER'S PROPOSAL FOR  
SCHEDULE NO. 37 AVOIDED COST  
PRICING**

---

**INTRODUCTION**

In response to the testimony of the parties filed in this matter, and in lieu of rebuttal testimony, Kennecott Utah Copper LLC ("Kennecott") and Tesoro Refining & Marketing Company LLC ("Tesoro") submit the following comments on the proposed revisions to Electric Service Schedule No. 37 filed by Rocky Mountain Power ("RMP")

**COMMENTS**

The Federal Energy Regulatory Commission ("FERC") has plenary authority over the wholesale sale of electricity—that is, the sale of electricity for resale.<sup>1</sup> 16 U.S.C. § 824. Under

---

<sup>1</sup> The retail sale of electricity is governed by state law and, except for certain exceptions not relevant here, in Utah, subject to the regulatory authority of the Utah Public Service Commission ("PSC" or the "Commission"). Utah Code

the Federal Power Act (“FPA”), persons or entities who engage in wholesale sales of electricity must have: (a) a federal market-based rate tariff on file with FERC to sell electricity at market prices; (b) a cost-based rate tariff on file with FERC to sell electricity at cost-based prices; or (c) an exemption from the rate tariff filing requirements. *Id.* § 824d(c). For qualifying facilities (“QFs”) taking advantage of Schedule 37, the Public Utility Regulatory Policies Act of 1978 (“PURPA”) provides that exemption. 18 C.F.R. § 292.601. Pursuant to PURPA, states have been authorized, under strict guidelines, to set the avoided cost price at which electric public utilities are required to purchase the output of QFs. *Id.* §§ 292.302, 292.303.

Purchases made by RMP are made to enable it to serve its retail customers, thus they are wholesale purchases. Persons who seek to sell power to an electric public utility like RMP are thus engaged in the wholesale sale of electricity and subject to the FPA unless eligible for an exemption such as that granted to QFs under PURPA.

The only price at which electric public utilities are required to purchase electricity from QFs is the avoided cost set by state commissions, like the PSC, under the strict guidelines of PURPA. 18 C.F.R. § 292.303. The components of the avoided cost are specified in PURPA, not as a function of RMP’s integrated resource plan, or any other source. *Id.* § 292.304(e). Persons who demand an avoided cost price higher than that produced by the approved PURPA guidelines are thus engaged in the wholesale sale of electricity without the protection of the QF exemption, and must have a tariff approved by and on file with FERC or be in violation of federal law.

---

Ann. §§ 54-4-1, 54-2-1. RMP, and electric public utilities like it, have been authorized to sell power at retail, but to do so, they are subject to the regulation of the PSC.

Arguments can be made that the formula articulated by PURPA may produce results that are unattractive to some QFs. However, the remedy lies not in trying to persuade the Utah PSC to exceed its delegated jurisdiction under FERC, nor in flirting with the violation of federal law, but rather in seeking a change in the federal law that prescribes the methods for establishing the price an electric public utility must pay to buy the output of a QF.

Pursuant to PURPA and the components specified in 18 C.F.R. § 292.304(e), the PSC set the formula to determine the avoided cost for QF purchases in Docket No. 12-035-100. Under federal law, that is the avoided cost formula to be used for all QF purchases regardless of the size of the QF. Therefore, Kennecott and Tesoro encourage the Commission to revise the avoided cost formula for Schedule No. 37 to mirror that already set for Schedule No. 38

### **CONCLUSION**

Based on the foregoing, the determination of the avoided cost to be paid to QFs by RMP under Schedule No. 37 must mirror that already set in Schedule No. 38. Thus, Kennecott and Tesoro encourage the Commission to adopt the changes proposed that would meet that goal.

DATED this 29th day of August, 2014.

/s Vicki M. Baldwin

WILLIAM J. EVANS  
VICKI M. BALDWIN  
PARSONS BEHLE & LATIMER  
Attorneys for Kennecott Utah Copper LLC  
and  
Tesoro Refining & Marketing Company  
LLC

**CERTIFICATE OF SERVICE**

Docket No. 14-035-T04

I hereby certify that on this 29th day of August 2014, I caused to be emailed, a true and correct copy of the foregoing comments on **COMMENTS ON ROCKY MOUNTAIN POWER'S**

**PROPOSAL FOR SCHEDULE NO. 37 AVOIDED COST PRICING** to:

Patricia Schmid  
Assistant Attorneys General  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
pschmid@utah.gov

Michele Beck  
Executive Director  
Committee of Consumer Services  
500 Heber Wells Building  
160 East 300 South, 2nd Floor  
Salt Lake City, UT 84111  
mbeck@utah.gov

David L. Taylor  
Yvonne R. Hogle  
Rocky Mountain Power  
201 South Main Street, Suite  
2300  
Salt Lake City, UT 84111  
Dave.Taylor@PacifiCorp.com  
yvonne.hogle@pacificorp.com  
datarequest@pacificorp.com

Chris Parker  
William Powell  
Dennis Miller  
Division of Public Utilities  
500 Heber Wells Building  
160 East 300 South, 4th Floor  
Salt Lake City, UT 84111  
wpowell@utah.gov  
dennismiller@utah.gov  
chrisparker@utah.gov

Sophie Hayes  
Utah Clean Energy  
1014 2<sup>nd</sup> Avenue  
Salt Lake City, UT 84111  
sophie@utahcleanenergy.org

Cheryl Murray  
Dan Gimble  
Utah Committee of Consumer  
Services  
160 East 300 South, 2nd Floor  
Salt Lake City, UT 84111  
cmurray@utah.gov  
dgimble@utah.gov  
dannymartinez@utah.gov

/s/ Colette V. Dubois

---