

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC SERVICE COMMISSION

SALT LAKE, STATE OF UTAH

* * *

IN THE MATTER OF THE)
APPLICATION OF ROCKY MOUNTAIN) Docket No. 08-035-83
POWER FOR APPROVAL OF A POWER)
PURCHASE AGREEMENT BETWEEN)
PACIFICORP AND KENNECOTT UTAH)
COPPER CORPORATION)
AND)

IN THE MATTER OF THE)
APPLICATION OF ROCKY MOUNTAIN) Docket No. 08-035-82
POWER FOR APPROVAL OF A POWER)
PURCHASE AGREEMENT BETWEEN)
PACIFICORP AND TESORO)
REFINING AND MARKETING) ALJ: Ruben Arredondo
COMPANY)

* * *

December 3, 2008

9:29 a.m. to 9:50 a.m.

Public Service Commission
160 East 300 South, Room 451
Salt Lake City, Utah

* * *

Letitia L. Meredith
-Registered Professional Reporter-
Certified Shorthand Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For Rocky Mountain Power:
Daniel E. Solander
ROCKY MOUNTAIN POWER
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111

For PacifiCorp Energy:
Paul Clements
PACIFICORP ENERGY
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111

For Kennecott and Tesoro:
F. Robert Reeder
PARSONS, BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

Also Present:

For the Committee of Consumer Services:
Paul Proctor
Dan Gimble

For the Division of Public Utilities:
Michael Ginsberg
Charles Peterson

For Kennecott: Stephen C. Sands II, P.E.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Good morning. We are here in the matter of the Application of Rocky Mountain Power for Approval of a Power Purchase Agreement between PacifiCorp and Kennecott, Docket No. 08-035-83. And I'm Ruben Arredondo, the ALJ, assigned by the Commission in the matter. If we could just take appearances please, starting with Rocky Mountain Power.

MR. SOLANDER: Daniel Solander on behalf of Rocky Mountain Power, and I have with me Paul Clements.

THE COURT: All right. Thank you.

MR. GINSBERG: Michael Ginsberg for the Division of Public Utilities and Charles Peterson is the Division's representative.

MR. PROCTOR: Paul Proctor on behalf of the Committee of Consumer Services, accompanying Dan Gimble, who is with the Committee.

THE COURT: Thank you. Anybody else?

MR. REEDER: Good morning. I'm Robert Reeder. I appear this morning for Kennecott. With me this morning is Steve Sands, Director of Energy Programs at Kennecott. Thank you.

THE COURT: Thank you. Okay. I think today --

1 actually let me just ask the parties -- I assume
2 everybody is going to put witnesses on? Rocky
3 Mountain Power?

4 MR. SOLANDER: We have one witness.

5 THE COURT: Mr. Reeder?

6 MR. REEDER: We have no witnesses. We read the
7 reports. The reports were all positive. We think
8 this should be a very brief matter.

9 THE COURT: Yeah. Mr. Ginsberg, I know you will
10 put --

11 MR. GINSBERG: Yes.

12 THE COURT: Mr. Proctor?

13 MR. PROCTOR: The Committee has filed its
14 comments and recommendations with the Commission.
15 I'm wondering whether we could handle this matter on
16 the basis of submitting it on the record. Certainly
17 Mr. Gimble is available for questioning, but we have
18 no questions of the other parties.

19 THE COURT: Okay. Yeah. I think what we're
20 going to do is just take administrative notice of the
21 application, all the recommendations that have been
22 filed. And then I believe we can just proceed with
23 Mr. Solander and Mr. Ginsberg. And I think I did
24 just want some comment. I think the Commission wants
25 comment on the Committee's recommendations at the end

4

1 of that, if I could just get some comment back on
2 that.

3 So, Mr. Solander, we'll start with you.

4 MR. SOLANDER: Thank you, Judge Arredondo.

5 Starting with the Kennecott, if that's okay
6 with you?

7 THE COURT: Yeah, uh-huh.

8 MR. GINSBERG: Did you want to go ahead and do
9 both of these?

10 THE COURT: Yeah, we can do both right now.

11 MR. SOLANDER: As you know, as you're aware --

12 THE COURT: If there's no objections.

13 MR. REEDER: Let me enter my appearance also for
14 Tesoro Refining if you're also going to proceed with
15 it at the same time.

16 THE COURT: Thank you.

17 MR. SOLANDER: As you're aware and as the
18 Commission is aware, Rocky Mountain Power entered
19 into two non-firm Purchase Power Agreements, one with
20 Kennecott Utah Copper Corporation on the 9th of
21 October 2008 and one with Tesoro Refining and
22 Marketing Company on October 8th, 2008. Both of
23 those agreements were filed with the Commission on
24 October 14th, 2008, and subsequently both the
25 Division and the Committee filed comments in support

5

1 of each of those agreements.

2 At this time I would like to introduce
3 Paul Clements, Rocky Mountain Power, origination
4 department, and Paul would like to offer to you
5 comments and some explanations regarding the comments
6 that were filed by the Division and the Committee.

7 THE COURT: Okay. Go ahead, Mr. Clements.

8 MR. CLEMENTS: Your Honor, with your permission
9 I would like provide today a brief overview of the
10 seller's -- of the significant contract terms and
11 then a few comments on the pricing structure and
12 avoided line loss adjustment.

13 THE COURT: Okay.

14 MR. CLEMENTS: The comments will be brief.
15 Starting with Kennecott, Kennecott Utah Copper
16 Corporation owns and operates a waste heat fired
17 cogeneration facility in Magna, Utah, with a
18 Nameplate Capacity Rating of 31.8 megawatts.
19 Kennecott intends to operate this facility as a
20 qualifying facility, and they will sell approximately
21 14,000 megawatt hours per month to PacifiCorp.

22 The facility is fueled by the waste heat
23 that is created through the operation of several
24 furnaces used through the copper refining and
25 smelting processes. The Power Purchase Agreement

6

1 between Rocky Mountain Power and Kennecott is a
2 one-year contract with no renewal terms. Kennecott
3 is contractually obligated to sell the entire output
4 of the facility to Rocky Mountain Power. The pricing
5 structure is as follows: Kennecott will receive
6 pricing consistent with Commission Order and Docket
7 03-035-14. Kennecott has paid a single price of
8 72.96 per megawatt hour for all deliveries during the
9 term. The contract does include an avoided line loss
10 adjustment of 2.94 percent applicable to all
11 deliveries.

12 Now, I'd like to provide some comments on
13 line loss adjustment that are applicable to both
14 Kennecott and Tesoro since the methodology was used
15 for both. The company met jointly with Kennecott,
16 Tesoro, the Division of Public Utilities, and the
17 Committee of Consumer Services to discuss the avoided
18 line loss issue as it has been a topic of interest in
19 past contracts. I'm pleased to report today that
20 while the parties did not always agree on all of the
21 issues, the discussions were very productive and
22 ultimately resulted in an avoided line loss
23 adjustment that all parties could reasonably agree to
24 for these particular contracts.

25 The company acknowledges the comments

7

Letitia L. Meredith, RPR
DepomaxMerit

1 included in both the Division and the Committee memos
2 regarding applicability of this methodology in future
3 QF contracts, and we request today respectfully that
4 no party be bound by this methodology, the avoided
5 line loss methodology, in whole or in part in any
6 future proceeding.

7 In its application for approval of both of
8 these contracts, the company included some
9 supplemental explanatory information labeled as
10 Exhibit B. That exhibit provides a detailed
11 explanation of the avoided line loss methodology.
12 Since no party seems to be opposed to this
13 methodology today, I won't attempt to summarize it in
14 my comments, but I'm pleased to answer any questions
15 if there are any today.

16 Some additional comments on the Division
17 and Committee memos as well that would be applicable
18 to both contracts -- both the Division and Committee
19 raised some issues regarding whether or not the
20 Chehalis resource was included in the avoided cost
21 pricing run. Both parties determined that the
22 inclusion of the resource, the Chehalis resource,
23 resulted in an immaterial change to the avoided cost,
24 but they both requested the company consider the
25 status of significant resource acquisition when

8

Letitia L. Meredith, RPR
DepomaxMerit

1 calculating future avoided cost -- or avoided cost
2 for future QF contracts. The company acknowledges
3 this request and agrees to consider new resource
4 status on calculating avoided cost for future
5 contracts.

6 Now a few comments on Tesoro, switching
7 over to them, Tesoro Refining and Marketing owns a
8 natural gas-fired cogeneration facility in Salt Lake
9 City, Utah with the Nameplate Capacity Rating of
10 25 megawatts. Tesoro intends to operate it as a
11 qualifying facility and sell approximately
12 15,800 megawatts hours each month to PacifiCorp.

13 This particular cogeneration facility is an
14 integral part of Tesoro's operation in that it
15 provides the majority of the steam supply required by
16 the refinery operations. Like Kennecott, the Tesoro
17 Power Purchase Agreement is a one-year contract with
18 no renewal terms, and also Tesoro is contractually
19 bound to sell all of the output to PacifiCorp. The
20 pricing structure for the Tesoro agreement is
21 slightly different. Similar to Kennecott, the
22 pricing is consistent with Commission Order and
23 Docket No. 03-035-14.

24 Tesoro has paid a price of \$95.85 per
25 megawatt hour for all on-peak deliveries and \$42.34

9

Letitia L. Meredith, RPR
DepomaxMerit

1 per megawatt hour for all off-peak deliveries. Since
2 Tesoro occasionally generates different levels during
3 the on-peak and off-peak periods, parties agree that
4 the pricing should be broken out into separate
5 on-peak and off-peak pricing in order to provide
6 appropriate price signals to Tesoro. The Tesoro
7 contract includes an avoided line loss adjustment of
8 2.93 percent for all deliveries. And once again that
9 methodology is explained in Exhibit B, and I have no
10 further comments but would be pleased to answer any
11 questions.

12 THE COURT: Do the parties have any questions
13 for Mr. Clements?

14 MR. REEDER: We have no questions.

15 THE COURT: I think I -- let me just ask a
16 question real quick for the Commission's benefit.
17 Maybe we can go out of order right now. I'd like to
18 get some comment on this. On the Committee's
19 recommendation they essentially recommended approval
20 of the PPA with some conditions. It listed one, two,
21 three, four. Paragraph three has subparts to it.

22 Do you want to comment on these conditions,
23 Mr. Clements?

24 MR. CLEMENTS: Sure. I'd be happy to. I
25 believe the first one is self-explanatory in that

10

1 they recommend approval of the avoid cost price for
2 these two contracts. We would agree with that.

3 THE COURT: I guess just mainly number two and
4 three.

5 MR. CLEMENTS: Sure. Number two, as I
6 mentioned, the company acknowledges there was
7 somewhat of a unique situation with the Chehalis's
8 resource acquisition and that the company had entered
9 into an agreement with the owner of Chehalis to
10 acquire that facility and that agreement was in place
11 at the time that the avoided costs were calculated
12 for the Tesoro and Kennecott agreements. However,
13 that particular transaction had not closed, meaning
14 the parties had not reached a closing date to acquire
15 that resource and technically that resource was not
16 owned by PacifiCorp at the time the pricing was run.

17 Now, the company is neither agreeing nor
18 disagreeing that Chehalis should have been included
19 in the pricing run; and had the impact of inclusion
20 of Chehalis been more significant or at least
21 somewhat material, I think the parties would have sat
22 down to determine whether we needed to update the
23 avoided cost to include that resource. Now that
24 being said, the company agrees to in future QF
25 contracts to be more cognizant or at least be more

11

1 collaborative with the Division and the Committee on
2 new resource acquisitions and discuss the
3 applicability of including those resource
4 acquisitions in the avoided cost pricing run.

5 THE COURT: All right. I guess that goes for
6 both, same recommendation for Tesoro and Kennecott.

7 MR. CLEMENTS: Yes.

8 THE COURT: Paragraph two and three.

9 MR. CLEMENTS: And for number three I believe
10 the comments are that the avoided cost -- the avoided
11 line loss methodology not be binding in future QF
12 contracts, and they even spell out that it not be
13 binding in future Tesoro or Kennecott contracts, and
14 the company does not oppose that. As I mentioned in
15 my comments today, the avoided line loss payment was
16 a compromise between all parties, and we would
17 request that the methodology not be binding in future
18 proceedings as well.

19 THE COURT: Okay.

20 MR. CLEMENTS: However, we do request that the
21 Commission approve these two agreements without any
22 conditions.

23 THE COURT: Okay. All right. Mr. Gimble -- or
24 actually, Mr. Peterson, would you like to comment on
25 those two recommendations, paragraphs two and three?

12

1 MR. PETERSON: I'll go first. Basically we
2 agree with or acknowledge what Mr. Clements said with
3 regard to number two. Just by clarification, the
4 Chehalis acquisition was well underway as it achieved
5 approval by the regulatory bodies for the company to
6 go through with it. I guess there was at the time
7 the avoided cost calculations were done there was a
8 theoretical possibility that the deal could have
9 fallen through, but at that point in time it looked
10 to all parties to be essentially a done deal. They
11 were just waiting for a closing date, which did occur
12 about a month after the indicative pricing or the
13 avoided cost calculations were done.

14 But in the future, if a similar event
15 occurs, the Division does hope that the company --
16 and they acknowledge they will -- review their
17 current practice, and the Division certainly feels
18 that Chehalis should have been included under the
19 circumstances that existed. It does in this instance
20 have no material effect on the pricing, and so the
21 Division does not recommend or request that any
22 changes be made.

23 However, we can at least imagine that if
24 the resource had been in the state of Utah as opposed
25 to state of Washington, that the situation may have

1 been much different. With regard to item three, the
2 Division agrees with the other parties that the
3 avoided line loss calculation or methodology
4 shouldn't be binding on any parties going forward.
5 We would note that as implied by the Committee's
6 comments, that if in future non-firm contracts we see
7 multiyear contracts be offered, that we will
8 definitely want to reconsider the methodology and the
9 applicability of the methodology that has been used
10 heretofore to estimate avoided line losses.

11 If we may even request that the company
12 calculate avoided line loss on a resource-by-resource
13 basis. That is to say, for every resource that is
14 backed off the QF we may want to see what the impact
15 on avoided line losses would be. The Division
16 recognizes that would be a time-consuming and
17 burdensome process which we have not requested for
18 these relatively short-term contracts. But if we end
19 up with multiyear contracts, such an analysis may be
20 required to satisfy the Division's concern in this
21 matter that ratepayer neutrality is not maintained
22 with a non-firm contract. In any case, I think I've
23 covered two and three and I guess it's also implicit
24 with item four there is no material change.

25 THE COURT: Right.

14

1 MR. PETERSON: So that's my comment.

2 THE COURT: Thank you, Mr. Peterson.

3 Mr. Gimble, would you like to comment on
4 those?

5 MR. GIMBLE: What I hear from the other parties
6 is they are essentially agreeing to what we set forth
7 as, I guess, caveat conditions associated with
8 approval of these contracts. I'm a little bit
9 perplexed by the comments of the company in terms of
10 they don't think this needs to be -- these PPAs need
11 to be approved based on condition but they seem to be
12 agreeing to the conditions that we set forth in terms
13 of working with the parties. For example, so we
14 don't miss a Chehalis again in the indicative price
15 runs. And then in terms of the avoided line losses,
16 that they don't set precedential value in this case.

17 THE COURT: Okay.

18 MR. CLEMENTS: May I respond to that, Your
19 Honor?

20 THE COURT: Sure.

21 MR. CLEMENTS: Just to clarify, Mr. Gimble, I
22 guess what I'm saying is -- what the company is
23 saying is the applications before the Commission
24 today are for approval of these specific QF contracts
25 and some of these items regarding avoided line losses

15

1 and whether a resource should or should not be
2 included are more generic QF methodology issues that
3 may not be appropriate to be discussed or to be
4 decided in these particular dockets which were open
5 for approval of a specific contract.

6 Now that being said, we're happy to go on
7 record saying we agree -- with significant resource
8 acquisitions in the future we'll definitely work with
9 all parties to come to a reasonable solution early on
10 in the process. Also, we certainly agree and we
11 request that the avoided line loss methodology not be
12 binding in the future. We said that in the past.
13 The history of avoided line loss is a very long one,
14 and we spent many hours in these chairs discussing
15 avoided line losses. And the Commission has ordered
16 us to do it on a contract-by-contract basis and we
17 tried to proceed in that manner. So each contract is
18 unique and we don't necessarily want to set forth
19 that the Commission should be deciding avoided line
20 loss policy in these approval dockets.

21 THE COURT: Okay. Do you want to respond to
22 that appropriateness of dealing with these concerns
23 in these dockets versus another docket?

24 MR. PROCTOR: May I speak with my client
25 quickly?

16

1 THE COURT: Uh-huh.

2 Did you want to make a comment, Mr. --

3 MR. GINSBERG: My comment is in my mind it's
4 always cleaner to have these kind of statements like
5 the quarterly reporting and other things that relate
6 directly to this order in the order so that it's in a
7 written document that people know exactly what is
8 going to happen in the future rather than just
9 leaving it up to people's memories or a record and a
10 transcript. It seems the company is perfectly
11 willing to agree to these requirements, so in my mind
12 it ought to be in your order.

13 THE COURT: Okay. Thank you. Did you want to
14 add more, Mr. Gimble?

15 MR. GIMBLE: I don't have any further comment at
16 this point.

17 THE COURT: Okay. Thank you. All right. If
18 that's all from the company, we'll go ahead and move
19 on with Mr. Ginsberg and the Division. Anything you
20 want to add?

21 MR. GINSBERG: I'm not sure we actually have any
22 additional comments. I don't think we have any
23 additional comments to make other than what was
24 already made, the recommendations, some of which were
25 not discussed, but the recommendations that we made

17

1 are in our memorandum.

2 THE COURT: Okay. Committee? Anything else
3 you'd like to add?

4 MR. PROCTOR: No.

5 THE COURT: Mr. Reeder?

6 MR. REEDER: Just one thing, and that is to say
7 thank you to the company, the Committee, and to the
8 Division for working with us, as Paul described,
9 cooperatively to try to resolve these various issues.
10 I think we did a nice job on this
11 contract-by-contract basis to resolve this. Thank
12 you all for working so cooperatively.

13 THE COURT: All right. Thank you. Given that,
14 we'll take administrative notice of the applications,
15 recommendations that have been made and filed with
16 the Commission, and everything that's been stated on
17 the record, and then the Commission will issue an
18 order soon. Thank you.

19 (Whereupon the taking of this hearing was
20 concluded at 9:50 a.m.)

21 * * *

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH)
)
COUNTY OF UTAH)

THIS IS TO CERTIFY that the foregoing hearing was taken before me, Letitia L. Meredith, Registered Professional Reporter and Notary Public in and for the State of Utah and State of California.

That the hearing was reported by me in Stenotype, and thereafter transcribed by computer under my supervision, and that a full, true, and correct transcription is set forth in the foregoing pages.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Spanish Fork, Utah, this ___ day of _____, 2008.

Letitia L. Meredith, CSR/RPR

My commission expires:
February 9, 2009

