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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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Date: October 15, 2009

Subject: Office of Consumer Services' Comments on the Application of Rocky Mountain Power for Approval of an Electric Service Agreement between Rocky Mountain Power and Kennecott Utah Copper LLC.
Docket No. 09-035-59

1 Background

On August 11, 2009, Rocky Mountain Power (Company) filed for Public Service Commission (Commission) approval of a one year Electric Service Agreement (ESA) between Rocky Mountain Power and Kennecott Utah Copper LLC (Kennecott). The ESA is essentially an extension of the current agreement which expires on December 31, 2009. The new ESA would begin on January 31, 2010 and terminate on December 31, 2010.[1] The Application was accompanied by the testimony of Paul H. Clements on behalf of Rocky Mountain Power.

2 Issues

In this memo the Office of Consumer Services will not address every aspect of the ESA; rather we will discuss certain issues that we view as important to other customers of Rocky Mountain Power and offer our comments and recommendations regarding those issues.

[1] The ESA establishes the terms and conditions for back-up and supplemental electric service to Kennecott.

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2.1 Changes in Rates. The ESA calls for an adjustment to the rates Kennecott pays effective January 1, 2010. Mr. Clements explains that the “rates in the agreement are referent to Schedule 31 and Schedule 9 rates and represent a 3.17% increase to Kennecott’s calendar year 2009 rates”.[2]

The Office notes that on May 8, 2009 Rocky Mountain Power customers, other than special contract customers, incurred a rate increase and potentially those same customers could be subjected to another increase in February 2010. While the proposed ESA will result in increased rates for Kennecott on January 1, 2010 those rates will lag rates that other customers incurred in May 2009 and a February rate change will have no impact on Kennecott’s rates. The Company has not provided a rationale for the lag in rate increases. The Office recommends that the contract should automatically be increased when general rates are increased[3] or the Company should provide an explanation as to why it is appropriate that Kennecott should not be subject to the same rate increases as other customers.

2.2 New Contract Language. The contract contains new language addressing three issues:

1) an energy cost adjustment mechanism (ECAM). Kennecott agrees that it will pay its portion of any Commission determined ECAM surcharges concurrently with the ordered implementation date;
2) demand side management surcharge. Kennecott will be subject to demand-side-management surcharges if so ordered by the Commission; and
3) potential future greenhouse gas related costs. Kennecott agrees that it will pay its share of greenhouse gas costs on the timeline approved by the Commission in any proceeding addressing the matter.

Each of these issues currently or potentially has cost impacts for customers of Rocky Mountain Power. If the Commission approves an ECAM, or other energy cost adjustment mechanism or greenhouse gas related costs are imposed it is appropriate that Kennecott, and other special contract customers, should bear their fair share of those costs at the same time as other customers incur them.

Mr. Clements points out that the provision regarding greenhouse gas costs as well as other provisions in the ESA are subject to renegotiation in future agreements. The Office recommends that future ESAs should contain similar provisions regarding these types of costs to remove the opportunity for special contract customers to argue for a delay in changing their rates and to make clear that all customers will share the burden of costs of this nature on a similar time line.

There is an additional item that the contract language failed to include, major plant additions. As indicated by the language regarding an ECAM or greenhouse gas related costs the Company and Kennecott acknowledge the appropriateness that all customers

[2] Clements Direct Testimony p 3, lines 34-36.
[3] The increase should be tied to a formula involving the appropriate rate classes.

impose costs on the electric system and therefore have a shared responsibility for those costs. The Office recommends that the Commission require the ESA be modified to include a provision that Kennecott will incur its share of any major plant addition costs approved by the Commission under Statute §54-7-13.4 as determined by the Commission in those cases.

3 Recommendation

The Office recommends that the Commission require:

1) the contract to be automatically increased when general rates are increased;
2) the ESA be modified to include a provision specifying that Kennecott will be subject to any costs attributed to major plant additions as determined by the Commission in those cases; and
3) that the Company include similar language regarding ECAM, DSM costs, greenhouse gas related costs and major plant additions in future ESAs.