

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky Mountain Power for Approval of an Electric Service Agreement between Rocky Mountain Power and Kennecott Utah Copper LLC	)	<u>DOCKET NO. 09-035-59</u>
	)	<u>ORDER APPROVING POWER PURCHASE AGREEMENT</u>

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ISSUED: November 25, 2009

By The Commission:

This matter is before the Commission on the Application of Rocky Mountain Power (Company) for Approval of an Electric Service Agreement between (Agreement) between Rocky Mountain Power and Kennecott Utah Copper, LLC (Kennecott). The Administrative Law Judge of the Commission held a duly-notice scheduling conference on Wednesday, November 4, 2009. Daniel Solander was counsel for the Company. Paul Clements testified on behalf of the company. Robert Reeder was counsel for Kennecott. Michael Ginsberg, assistant attorney general, was counsel for the Division of Public Utilities (Division). Charles Peterson testified on behalf of the Division. Paul Proctor, assistant attorney general, was counsel for the Office of Consumer Services (OCS). Cheryl Murray testified on behalf of the OCS.

The Company submitted its Application on August 11, 2009. The underlying Agreement was filed under a protective order in this docket, as it is a confidential document. The Division filed its Recommendation on October 15, 2009. The OCS also submitted its Recommendation October 15, 2009.

The Agreement is a modification of an existing agreement expiring December 31, 2009. The Commission approved the existing agreement in Docket No. 04-035-68. The

Agreement details the terms, pricing, and conditions under which the Company will provide backup, maintenance, and supplementary power to the Kennecott facilities. The specifics of the Agreement are detailed in the Application, attached Agreement, and summarized in the Division's and OCS's Recommendations.

The Division recommended approval of the Agreement with conditions on future Agreements. The Division recommended the Commission direct the Company and Kennecott to shorten the time between the approved changes in the pricing terms of the Schedule 9 and 31 tariffs, or other indexes, and changes in the pricing terms of future Agreements to no more than 90 days. It also recommended that the Commission require the Company to perform a cost of service study, or similar showing that the Company's costs are being reasonably covered by the Agreements, and that it file such study no later than the filing of the new Agreement.

Regarding the Division's recommendation that for future electric service agreements, rate adjustments occur at or near the time rate adjustments occur for other Schedule 9 customers, the Company responded: "[W]e're aware of the recommendation that the Division has made, and we intend to discuss that with Kennecott during the next contract negotiation session for the 2011 and beyond contract." *Paul Clements' Testimony, Transcript of November 4, 2009 Hearing*, p.8, ll.8-9, p.9, ll.1-2.

Regarding the Division's recommendation that the Commission require a cost of service study to show that the Company's costs are being reasonably covered by the Agreement, the Company responded:

. . . Kennecott's rates are primarily based on Schedule 31 for the March through October period when their large coal unit is operating, and then on Schedule 9 for the

other months when the unit is not operating. As you'll note, the cost of service study that the company typically files in conjunction with its rate cases does not include a cost of service for the Schedule 31 tariff class. The Schedule 31 rates are largely based on the Schedule 9 rates, and so there isn't an individual cost-of-service study done for a Schedule 31 customer.

*Id.* at p.10, ll.19-25, p.11, ll.1-5.

The OCS also recommended approval generally upon certain conditions. It asked the Commission to 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; 3) and that the Company include similar language regarding ECAM, DSM costs, greenhouse gas related costs and major plant additions in future ESAs.

*OCS Recommendation*, p. 3.

The Company responded to these recommendations as follows:

(Q.) JUDGE ARREDONDO: I do have a question for the Company on the Office's Recommendations. Mr. Clements, did you read those, numbered 1 through 3, on page 3 of their recommendation?

(A.) MR. CLEMENTS: Yes, I did.

Q: And can you respond to those?

A: I'd be happy to. The first being that the contract be automatically increased when general rate case -- general rates are increased. I think I'll address that and the second one at the same time. The second one is that the ESA be modified to include a provision specifying that Kennecott be subject to any costs attributed to major plant additions.

Those two particular recommendations would alter the terms and conditions of the agreement as to between Kennecott and the Company, and that would alter the rates that were set forth in the agreement. This is a one-year contract, and the rates were set according to the method and the rate adjustment mechanism that I discussed earlier in my testimony today. And the Company believes that adopting those two recommendations would significantly alter the material terms and conditions of the agreement. And I believe if those two conditions were adopted by the Commission both parties, both being Kennecott and the Company, would likely want to go back and renegotiate the contract.

So the Company is unwilling to adopt the first two recommendations. And we believe the discussion today supports that those recommendations could be addressed or considered in future agreements, but this agreement we'd like to stand on its own. Concerning the third recommendation, that similar language regarding ECAM, DSM costs, greenhouse gas costs, and major plant additions be included in future ESAs, the Company and Kennecott, if I may speak on their behalf for a moment, have already agreed that future agreements will address those issues in some manner, so we don't have any issue accepting the third condition, that we have some sort of language in future contracts addressing those issues. However, we're unwilling to adopt recommendation one and two.

*Paul Clements Testimony, Transcript of November 4, 2009 Hearing, p.20, ll.1-25, p.21, ll.1-21.*

ORDER

Based on the Application, Agreement submitted by the Company, the Recommendation of the Division and OCS testimony presented by the parties at the hearing, the Commission finds the approval of the Application to be in the public interest and therefore approves the Agreement between the Company and Kennecott.

The Company and Kennecott shall ensure that for future electric service agreements, the interval between the approved changes in the pricing terms of the Schedule 9 and 31 tariffs and the changes in the pricing terms of future electric service agreements shall be no more than 90 days apart.

The Commission declines to order that the Company perform a cost of service study specifically for this electric service agreement. The Company represented that the Schedule 31 rates are based on Schedule 9 rates, which rates are cost-based rates filed with the application for rate increases, and the Commission will presume the Agreement rates are cost based or have some cost of service basis if reached via stipulation. *See also Report and Order*

*on Rate Design*, Docket No. 08-035-38, p. 12 (“Proposed rates for Schedule 31 supplemental service are based on Schedules 6, 8 and 9 rates as described above. “).

Also, the Commission does not have sufficient basis to order the Agreement implement the OSC’s first two recommendations, which would materially alter the terms and conditions of the Agreement. The concerns raised by the first two recommendations could be addressed previous to or during negotiations for future agreements, or possibly at the time of filling of an application for approval of an electric service agreement.

As to the OSC’s third recommendation, the Company shall ensure that future electric service agreements shall consider and implement language regarding “ECAM, DSM costs, greenhouse gas related costs, and major plant additions.”

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission’s final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah this 25<sup>th</sup> day of November, 2009.

/s/ Ruben H. Arredondo  
Administrative Law Judge

Approved and confirmed this 25<sup>th</sup> day of November, 2009 as the Report and  
Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

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