

To: The Public Service Commission of Utah

From: Rocky Mountain Power
Paul Clements, Power Marketer/Originator

Date: November 17, 2010

Subject: Rocky Mountain Power's Response to the Office of Consumer Services' and the Division of Public Utilities' Memorandums dated November 15, 2010 in Docket No. 10-035-116 (Kennecott Utah Copper LLC)

Background

On October 18, 2010, Rocky Mountain Power ("Company") filed with the Public Service Commission of Utah ("Commission") a petition for approval of a one year Electric Service Agreement ("ESA") between the Company and Kennecott Utah Copper LLC ("Kennecott"). On November 15, 2010, the Office of Consumer Services ("OCS) and the Division of Public Utilities ("DPU") each filed recommendations on the Company's petition. This memorandum responds to the issues raised and the recommendations made in those memorandums.

OCS Comments

Rate Adjustment Mechanism Mechanics

The OCS's first issue is the mechanics of the rate adjustment mechanism in section 4.10 of the ESA. The OCS contends that "the Company has not provided any analysis of the outcome of such a mechanism in the case of a general rate case or the current major plant addition cases or if a different ECAM design is approved."¹ In the Company's supplemental material filed on October 28, 2010 in the document titled "Explanation of Certain Contract Issues Related to the Master Electric Service Agreement between Rocky Mountain Power and Kennecott Utah Copper LLC Dated October 18, 2010," the Company provided a detailed explanation of how the rate adjustment works. The mathematical calculations of the rate adjustment mechanism are the same regardless of the source of the increase to energy rates. Therefore, while the Company provided only an example calculation based on an example ECAM increase, the explanation and analysis applies to rate increases from general rate cases, major plant addition cases, as well as different ECAM designs. The explanation and supporting analysis in the Company's October 28, 2010 filing provides sufficient evidence and support that the adjustment mechanism is just and reasonable for the ESA.

¹ OCS November 15, 2010 Confidential Memorandum in Docket No. 10-035-116, page 2.

Short Term Nature of the Rate Adjustment Mechanism

The OCS also states: “[i]f the Commission approves this ESA it should explicitly state that this is an interim, not a long-term solution.”² The Company agrees that this adjustment mechanism is intended to be a short term solution. The Company stated in its October 28, 2010 filing:

*The proposed rate adjustment mechanism in the Agreement is intended to be a short term arrangement, put in place in this one year contract primarily to address the current uncertainty around the Company’s ECAM design. The mechanism is not intended to be a long term solution. However, for this one year contract, the parties agreed some adjustment mechanism is reasonable on a short term basis while current Utah regulatory proceedings are resolved.*³

Lump Sum ECAM Payment

Lastly, the OCS states the following regarding the section of the ESA that allows Kennecott to make an annual lump sum ECAM payment: “The Office does not oppose the concept of Kennecott’s option to make an annual lump sum ECAM payment, rather we advocate that the Commission must implement a disciplined process by which the lump sum is determined including a means to true up a payment based on interim rates.”⁴

The Company agrees that a true up payment is just and reasonable and intends to implement a true up payment mechanism if a lump sum ECAM payment is used.

OCS Recommendations

The Company does not agree with the OCS’s recommendation to deny approval of the ESA. The OCS provided three recommendations⁵ in the event the Commission chooses to approve the ESA:

- 1) In the case of rate increases associated with RMP General Rate Cases or MPA cases all components of Kennecott’s rates be increased uniformly with Schedule 9 and Schedule 31 rates;
- 2) The Commission clearly indicate the adjustment mechanism is intended as an interim solution and that the Company not be allowed to use approval of this contract with its interim solutions as evidence of reasonableness for any future contracts; and
- 3) Prior to Kennecott making any lump sum payment for ECAM rates there should be a process in place, including a public hearing, to determine the amount of the payment and the means to true up payments based on interim rates. These proposed payments should be brought before the Commission for specific approval.

The Company does not agree with condition 1. For this short term agreement, the Company’s position is that the adjustment mechanism is just and reasonable for all rate increases. The Company agrees conceptually with condition 2 in that the Company intends for this to be a short term solution. However, the Company does not agree that the Commission should limit the parties’ ability to negotiate terms and conditions of future contracts. The terms and conditions of

² OCS November 15, 2010 Confidential Memorandum in Docket No. 10-035-116, page 5.

³ Company October 28, 2010 supplemental explanatory memo, page 3, lines 10-15.

⁴ OCS November 15, 2010 Confidential Memorandum in Docket No. 10-035-116, page 6.

⁵ OCS November 15, 2010 Confidential Memorandum in Docket No. 10-035-116, page 7.

future contracts can be evaluated when those contracts are submitted for approval. The Company agrees conceptually with condition 3 in that the Company intends to implement a true up payment on any lump sum ECAM costs. However, the Company does not agree that the Commission should require a separate proceeding for this purpose. The Company's position is that this action can either be addressed in conjunction with a relevant ECAM proceeding or by some other reasonable means.

In summary, the Company recommends that the ESA be approved without modifications or conditions.

DPU Comments

The DPU recommends approval of the ESA. The Company desires to provide a brief explanation on the issue of the removal from the ESA of the paragraph addressing curtailment. As the DPU pointed out in its memorandum, the paragraph allowing the Company to curtail or interrupt Kennecott under prescribed situations was removed from the ESA. The language allowed the Company to curtail Kennecott first in place of curtailing other customers when a curtailment of any kind is required in an emergency situation. The ESA did not specifically place a value on this condition or provide any compensation to Kennecott for granting this condition, so the parties agreed to remove this language from the ESA. The parties may elect to add curtailment provisions to the ESAs they execute in the future.