- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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	)	DOCKET NO. 10-035-116 ORDER APPROVING ELECTRIC SERVICE AGREEMENT

ISSUED: December 28, 2010

By The Commission:

This matter is before the Commission on the petition of PacifiCorp, doing business in Utah as Rocky Mountain Power ("Company"), for approval of an electric service agreement ("Agreement") between the Company and Kennecott Utah Copper, LLC ("Kennecott"). The Company submitted its petition on October 18, 2010. The underlying Agreement was filed under seal in this docket, as the Company considers it a confidential document.

The Administrative Law Judge of the Commission held a duly-noticed scheduling conference on October 26, 2010. On November 1, 2010, the Company filed a supplemental memorandum elaborating on various terms of the Agreement. The Division and the OCS each filed separate memoranda on November 15, 2010, summarizing their respective analyses and expressing their recommendations. On November 17, 2010, the Company filed a memorandum responding to the recommendations of the Division and OCS. In accordance with the published schedule, the Administrative Law Judge held a hearing on November 18, 2010. Represented at the hearing were the Company, Kennecott, the Division of Public Utilities ("Division"), and the Office of Consumer Services ("OCS").

The Agreement is a modified form of an existing agreement expiring December 31, 2010. The proposed contract term is one year beginning January 1, 2011 and ending December 31, 2011. Kennecott has entered into the Agreement to receive back-up power, maintenance, and supplementary power from the Company of up to 207 MW. Power in excess of 207 MW may be requested by Kennecott; however, the Company is not obligated to supply the requested excess power. The terms and pricing are based upon the Company's Schedules 9 and 31. The specifics of the Agreement are detailed in the petition and attached Agreement, and summarized in the Division's and OCS's memoranda.

The Division believes the Agreement will benefit the Company and its customers. Because Kennecott supplies its own power during the peak summer months, the Company need not incur the costs to acquire what otherwise would be a significant amount of additional peak power. Conversely, during the relatively low load months of November through February when Kennecott does not operate its own plant, the Company can supply power relatively inexpensively to Kennecott.

The pattern of Kennecott's peak load contribution differs noticeably from the peak load contribution of the average Schedule 9 customer. Consequently, the Agreement contains a table of monthly adjustments to electric energy charges (demand charges are unaffected). These monthly electric energy price adjustments were negotiated by the parties to account for the peak load contributions of Kennecott's monthly load. (The adjustments are not specified in this Order due to their confidential nature and are subject to the Commission's procedures for access to proprietary information.)

The Division has assessed the Agreement's rate adjustment mechanism and believes there likely will be minimal difference between the annual total revenues collected by the Company under the Agreement in comparison to a strict application of Schedules 9 and 31. The Division notes Kennecott is large enough that the monthly adjustments might affect the cost of service studies for Schedule 9 customers in future rate cases. For now, however, because the Agreement is only for one year, it is likely to have little impact on other customers, and at the same time allows the Company a reasonable opportunity to recover its costs.

The Division states the Agreement mitigates certain concerns it has expressed regarding predecessor contracts. In Docket No. 09-035-59, in which the Division reviewed the contract that will shortly expire, the Division asserted it lacked information regarding how well the Kennecott contract pricing covered the Company's cost of providing service. The contract that was approved in last year's docket was estimated to provide revenues to the Company that were up to about 3 percent less than a full application of Schedule 9 and 31 rates. With the move in the Agreement to Schedule 9 and 31 rates, this concern is mitigated. Additionally, the Division has previously expressed concern about the delay between the updating of the Company's tariffs through rate increases and the adjustment of Kennecott's rates under earlier contracts. The Division has no such concern about the Agreement because Kennecott's rates will adjust when Schedule 9 and 31 rates change.

In prior years, the Kennecott contract provided flexibility to the Company by allowing for curtailment and interruption of power to Kennecott under prescribed situations. This provision benefited other customers since Kennecott is a relatively large electric load which could be reduced or eliminated before interrupting service to other customers, in the event of a

systemic reduction of power. The Division notes the Agreement does not contain a curtailment/interruption term. The Division finds this change acceptable for several reasons. For example, the Company represents that its system operators have treated Kennecott as a firm load regardless of the provision and that Kennecott could be curtailed in an emergency with or without the former contract language. Therefore, the Company does not see the elimination of the curtailment language as significant. Moreover, the Company states it has curtailed Kennecott only once, and for only one hour, since 2006, and that was for an event caused by Kennecott which would have required curtailment with or without the contract language. Given these representations by the Company, the Division does not oppose the elimination of the curtailment/interruption language.

Based upon the above-outlined analysis, the Division concludes the terms of the Agreement appear to be just, reasonable, and in the public interest, and recommends Commission approval. The Division acknowledges the progress toward full Schedule 9 and 31 pricing the Agreement achieves, compared to the contract terms in place three years ago. This progress, consistent with the principle of gradualism, benefits the Company and its other ratepayers.

OCS recommends the Commission deny approval of the Agreement based on a lack of evidence the Agreement is necessary and in the public interest. For example, OCS asserts the Company has not adequately explained and illustrated how the Agreement's rate adjustment mechanism would perform in the context of potential future rate increases associated with general rate case and major plant addition proceedings. In its November 17, 2010 memorandum prepared in response to the OCS's observations, the Company explains that it

provided such an example in its November 1, 2010 memorandum. Although this sample calculation applied to an ECAM-related rate increase, the Company states its example and the accompanying explanation would apply to any rate change, regardless of the type of proceeding. Additionally, we note the Division accepts the adjustment mechanism calculation methodology as reasonable.

OCS urges that the Agreement, if approved at all, should only be viewed as a short term solution to the uncertainty associated with a potential ECAM that could be adopted during the term of the Agreement. Additionally, the OCS recommends the Commission impose certain conditions if the Agreement is approved, namely:

> 1) In the case of rate increases associated with [the Company's] General Rate Cases or MPA cases all components of Kennecott's rates [should] be increased uniformly with Schedule 9 and Schedule 31 rates;
>
> 2) The Commission [should] clearly indicate the adjustment mechanism is intended as an interim solution and that the Company [should] 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.

We find the Agreement, as discussed in the Company's application and memoranda, and evaluated by the Division, is adequately supported. Moreover, we note it will only be in effect one year, and is more closely linked to Schedules 9 and 31 than the similar contracts in prior years. Accordingly, we do not adopt OCS condition 1 but will allow the rate adjustment mechanism to operate according to the terms of the Agreement. With respect to condition 2, we note the Agreement by its terms will only be in effect for one year. Any

subsequent arrangements will require additional Commission approval. As to condition 3., should an ECAM mechanism be implemented, we will address any ECAM-related lump sum payment, including any true up, in the context of the relevant ECAM proceeding or another appropriate docket.

ORDER

Based on the Agreement, the petition and other material submitted by the Company, and the recommendation of the Division, the Commission finds the Agreement to be in the public interest, and it is approved.

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.

DATED at Salt Lake City, Utah this 28th day of December, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 28th day of December, 2010 as the Order Approving Electric Service Agreement 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
G#70251