

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

ISSUED: December 5, 2011

By The Commission:

This matter is before the Commission on the petition of PacifiCorp, doing business in Utah as Rocky Mountain Power (“Utility”), for approval of an electric service agreement (“Agreement”) between the Utility and Kennecott Utah Copper, LLC (“Kennecott”). The Utility submitted its petition on October 13, 2011, accompanied by the direct testimony of Paul H. Clements. The underlying Agreement was filed under seal in this docket, because the Company considers it a confidential document.

The Division of Public Utilities (“Division”) and the Office of Consumer Services (“OCS”) filed separate memoranda on November 7, 2011, summarizing their respective analyses and expressing their recommendations. The Division recommends the Agreement be approved. The OCS does not oppose approval but expresses certain concerns, detailed below, which the Division shares. The Commission, through a designated presiding officer, held a duly-noticed hearing on November 14, 2011. Represented at the hearing were the Utility, Kennecott, the Division and OCS

The Agreement is a modified form of an existing agreement expiring December 31, 2011. The proposed contract term is one year beginning January 1, 2012 and ending

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December 31, 2012. Kennecott has entered into the Agreement to receive back-up power, maintenance, and supplementary power from the Utility of up to a stated number of megawatts. Kennecott may request power in excess of the stated maximum; however, the Utility is not obligated to supply the requested excess power. The terms and pricing are based upon the Utility's Schedules 9 and 31. The specifics of the Agreement are detailed in the petition and attached Agreement, and summarized in the Division and OCS memoranda. (Various Agreement details 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 supports the Utility's position that the pattern of Kennecott's peak load contribution differs noticeably from the peak load contribution of the average Schedule 9 customer. To address this difference, the Agreement, as with the 2011 contract, 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. They are identical to the adjustment factors specified in the current contract.

Quoting Utility witness Paul Clements' testimony in last year's hearing that addressed the current contract, the Division explains that the Schedule 31 and Schedule 9 rates include rate designs that incorporate the different cost characteristics of on peak and off peak usage as well as summer and winter usage. Kennecott, however, desires that this one-year Agreement include assurance that rate changes allocated to Kennecott in 2012 will adequately take into account Kennecott's unique load characteristics. In particular, Kennecott desires that

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its energy related charges be allocated in a manner that reflects its unique seasonal usage pattern and its flatter-than-tariff-class load profile.

The Division has assessed the Agreement's energy rate adjustment factors and believes there likely will be minimal difference between the annual total revenues collected in 2012 by the Utility under the Agreement in comparison to a strict application of Schedules 9 and 31. Moreover, the Division has no indication the adjustment factors have adversely affected other customers during 2011. Hence, the Division does not oppose their use in the Agreement. Nevertheless, the Division believes there is no practical justification for the adjustment factors and recommends they not be used in future contracts.

The Division notes the Agreement has a new feature. Previously, the oxygen plant operated by Praxair on Kennecott's property had its own separate electric service agreement with the Utility. For 2012, the Agreement treats Praxair as a tenant and subsumes Praxair's energy needs within the Kennecott Agreement. The Division has no objection to this arrangement.

The Division believes the Agreement will benefit the Utility and its customers. Because Kennecott supplies its own power during the peak summer months, the Utility 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 Utility can supply power relatively inexpensively to Kennecott.

Based upon the foregoing, the Division concludes the terms of the Agreement to be just, reasonable, and in the public interest, and recommends Commission approval. The

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Division acknowledges the progress toward full Schedule 9 and 31 pricing the Agreement achieves, compared to the contract terms in place in recent years. This progress, consistent with the principle of gradualism, benefits the Utility and its other ratepayers.

OCS takes no position on whether or not the Agreement is in the public interest but raises concerns about the lack of evidentiary support for the monthly energy price adjustment factors, i.e., scalars. While OCS joins in the Division's conclusion that the factors will have minimal impact in 2012 on Utah retail customers, OCS believes the impacts could be much greater under different load and operational conditions.

OCS also raises questions regarding the Agreement's Provision 4.8, under which Kennecott may make a lump sum payment to avoid paying the Utility interest on monthly surcharges resulting from amortization of the Energy Balancing Account ("EBA"). OCS observes the Agreement does not specify how the interim lump sum payment would be trued up to the actual charges when the Commission determines the level of final EBA charges.

In light of its views on the Agreement, OCS makes three recommendations, should the Commission approve the Agreement:

1. The energy scalars used in the Agreement should not set precedent for any other special contract or electric service agreement.
2. The next electric service agreement between these parties should be filed at least 75 days before the hearing on the new agreement is held.
3. Prior to Kennecott making any lump sum payment in an EBA proceeding, a process should be defined for determining the amount of the payment and the means to true up

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any payments based on interim rates. Also, any proposed payment should be presented to the Commission for approval.

During the hearing, each party addressed the OCS recommendations.¹ The Division supports all three. The Utility supports the first, but also urges that scalars not be precluded from future use in appropriate settings. The Utility views the second recommendation as essentially a scheduling matter best addressed when the next application for approval of an electric service agreement is filed. The Utility is “somewhat indifferent” as to the third recommendation. Kennecott believes the scalars and the lump sum payment options addressed in recommendations 1 and 3 are necessary devices to address Kennecott’s uncertainties regarding how the EBA will be implemented. Kennecott believes recommendation 2 is not workable in light of Kennecott’s suppositions about the timing of the Utility’s next rate case and Kennecott’s need to factor the outcome of that case into its negotiations of the next electric service agreement.

DISCUSSION, FINDINGS AND CONCLUSIONS

We find the Agreement, as discussed in the Company’s petition and the memoranda of the Division and OCS, is adequately shown to be in the public interest. 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. In reaching this finding we also rely significantly on the analysis of the Division and OCS that the monthly energy charge adjustment factors are expected to have an immaterial effect. We adopt the OCS recommendation that the use of the adjustment factors or scalars not be precedential for future agreements. Moreover,

¹ See Transcript of Hearing Proceedings, Docket No. 11-035-181, November 14, 2011, pp. 17-33.

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should the Utility and Kennecott propose similar terms in any future contract, they shall submit the contract for approval in sufficient time before its desired effective date to allow parties at least 75 days of pre-hearing evaluation.

Regarding the lump sum EBA payment provision, we share the concerns expressed about the lack of any defined payment approval and true up process. Prior to making any such payment, the Utility and Kennecott must seek and receive Commission approval of a process that satisfactorily addresses the issues expressed in the OCS memorandum.

ORDER

Subject to the conditions expressed in the preceding two paragraphs, in accordance with the petition and the recommendation of the Division, the Commission finds the Agreement to be in the public interest. It is approved.

DATED at Salt Lake City, Utah this 5th day of December, 2011.

/s/ David R. Clark
Presiding Officer

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Approved and confirmed this 5th day of December, 2011 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
D#212008

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2011, a true and correct copy of the foregoing Order Approving Electric Service Agreement, was served upon the following as indicated below:

By U.S. Mail:

Paul Clements
Rocky Mountain Power
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Salt Lake City, UT 84111

Daniel E. Solander
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Data Request Response Center
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F. Robert Reeder
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By Hand-Delivery:

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Administrative Assistant