

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The Application ) of Rocky Mountain Power for Approval ) of the Power Purchase Agreement ) Between PacifiCorp and US Magnesium, ) LLC )	Docket No: 11-035-182
In the Matter of: The Application ) of Rocky Mountain Power for Approval ) of the Power Purchase Agreement ) Between PacifiCorp and Tesoro ) Refining and Marketing Company )	Docket No: 11-035-183
In the Matter of: The Application ) of Rocky Mountain Power for Approval ) of the Power Purchase Agreement ) Between PacifiCorp and Kennecott ) Utah Copper, LLC (Smelter) )	Docket No: 11-035-179
In the Matter of: The Application ) of Rocky Mountain Power for Approval ) of the Power Purchase Agreement ) Between PacifiCorp and Kennecott ) Utah Copper, LLC (Refinery) )	Docket No: 11-035-178
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: 11-035-181

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TRANSCRIPT OF HEARING PROCEEDINGS

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1 TAKEN AT: Public Service Commission  
2 160 East 300 South  
3 Salt Lake City, Utah  
4 DATE: November 14, 2011  
5 TIME: 10:04 a.m.  
6 REPORTED BY: Kelly L. Wilburn, CSR, RPR

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8 APPEARANCES

9 Presiding:

10 **DAVID CLARK**, Hearing Officer

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EXHIBITS

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(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed with the Commission.)

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WITNESSES - In Docket 181

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1 NOVEMBER 14, 2011

10:04 A.M.

2 P R O C E E D I N G S

3 HEARING OFFICER: This is the time and place  
4 duly noticed for Commission consideration of five  
5 applications.

6 MR. PROCTOR: Apologize.

7 HEARING OFFICER: That's quite all right.  
8 These applications relate to purchase power agreements  
9 and energy service agreements that are presented by  
10 PacifiCorp, doing business in Utah as Rocky Mountain  
11 Power.

12 I'm going to identify each matter briefly,  
13 not using the complete caption. But the matters that  
14 we are to consider today are, first, Docket  
15 No. 11-035-178, which pertains to an agreement with  
16 Kennecott Utah Copper which we'll refer to as the  
17 Refinery Agreement.

18 Docket No. 11-035-179, which pertains to an  
19 agreement with Kennecott Utah Copper which we'll refer  
20 to as the Smelter Agreement. Docket No. 11-035-181,  
21 which is the energy service -- or electric -- I'm  
22 sorry, Electric Service Agreement with Kennecott Utah  
23 Copper.

24 Docket No. 11-035-183, which involves the  
25 Applicant and Tesoro Refining and Marketing. And

1 Docket No. 11-035-182, which is an agreement between  
2 the Applicant and US Magnesium.

3 I hope I have all of that correct. Assuming  
4 I do, let's proceed to take appearances of the parties  
5 who are present today.

6 MR. SOLANDER: Good morning. My name is  
7 Daniel Solander, I'm senior counsel for Rocky Mountain  
8 Power. And I have with me at counsel table Paul  
9 Clements, market originator for PacifiCorp Energy,  
10 PacifiCorp.

11 HEARING OFFICER: Welcome.

12 MR. REEDER: Good morning. In Dockets  
13 No. 187, 189, and 181, I'm Robert Reeder, appearing  
14 for Kennecott. And with me this morning is Aaron  
15 Walkoviak of Kennecott.

16 In Docket No. 183, I'm Robert Reeder, and I'm  
17 here for Tesoro Refinery.

18 HEARING OFFICER: Thank you.

19 MR. DODGE: Thank you, Judge. Gary Dodge.  
20 In Docket 182 I'm appearing on behalf of US Mag. And  
21 would move on behalf of US Mag to intervene in that  
22 docket.

23 And I'll indicate that in the 181 docket I  
24 represent Praxair, who has not intervened, but I'm  
25 here in case there are questions from the Bench

1 relating to Praxair.

2 HEARING OFFICER: Thank you. And let me note  
3 for the record that the motions for intervention made  
4 by Kennecott, and Tesoro, and US Magnesium are  
5 granted.

6 MS. BURTON-LEE: Thank you Mr. Chair.  
7 Dahnelle Burton-Lee, Assistant Attorney General, on  
8 behalf of the Division of Public Utilities. And  
9 Charles Peterson from the Division is here on behalf  
10 of the Division today.

11 HEARING OFFICER: Thank you Ms. Burton-Lee.

12 MR. PROCTOR: Paul Proctor on behalf of the  
13 Office of Consumer Services. I'm accompanied by  
14 Mr. Gimble, who will be the witness in the case. And  
15 just to define our participation in this matter, the  
16 Office has not filed and has no comments with respect  
17 to the QF dockets. That would be 178, 179, 182, and  
18 183.

19 We have filed comments and will have a brief  
20 statement with respect to 181.

21 HEARING OFFICER: Thank you. As we discussed  
22 before going on the record this morning we'll take  
23 No. 182 first, since that involves the fewest number  
24 of parties and fewest number of matters common to  
25 parties.

1           Mr. Solander, would you address that first,  
2 please?

3           MR. SOLANDER: Certainly. We're here on the  
4 application of Rocky Mountain Power for an order  
5 approving the power purchase agreement between  
6 PacifiCorp and US Magnesium, LLC.

7           The current QF contract between the parties  
8 expires December 31, 2011. The parties desire that no  
9 time lapse between the expiration of that agreement  
10 and the effective date of the new agreement. And we  
11 would ask that the Commission approve the power  
12 purchase agreement.

13           If the Bench has any questions, Paul  
14 Clements, who was the primary negotiator on behalf of  
15 PacifiCorp, is here to take any questions or to  
16 clarify anything regarding the contract.

17           HEARING OFFICER: Okay. And I propose to --  
18 we have your filed application. I propose to have  
19 that marked as an exhibit in this docket. We'll call  
20 it RMP No. 1. And is there any objection to the  
21 receipt of that into evidence?

22           MS. BURTON-LEE: The Division has no  
23 objection.

24           HEARING OFFICER: Okay.

25           (Docket 182 RMP No. 1 was received.)



1 HEARING OFFICER: And I note that the  
2 Division has filed a memorandum --

3 MS. BURTON-LEE: Yes, your Honor.

4 HEARING OFFICER: -- supporting the  
5 application.

6 MS. BURTON-LEE: Yes, your Honor.

7 HEARING OFFICER: Ms. Burton-Lee, would you  
8 like to address that?

9 MS. BURTON-LEE: Yes, thank you, your Honor.  
10 The Division filed comments with regard to this  
11 contract and the exhibit on November 8, 2011. Mr. --  
12 what we would like to do at this time, in that those  
13 comments are part of the docket and have been filed,  
14 to identify those comments as an exhibit.

15 And those comments would reflect any  
16 testimony that Mr. Peterson would provide today. If  
17 there are questions for Mr. Peterson at this time, we  
18 would suggest that he be sworn in. He is available  
19 for questions from the Commission as well as other  
20 parties if requested.

21 HEARING OFFICER: Thank you Ms. Burton-Lee.

22 Do any parties have questions for  
23 Mr. Peterson?

24 MR. SOLANDER: No questions.

25 HEARING OFFICER: And is there any objection

1 to receiving the Division's memorandum into the record  
2 as Division Exhibit No. 1? Okay, then it will be  
3 received in evidence.

4 (Docket 182 Division No. 1 was received.)

5 HEARING OFFICER: Is there anything further  
6 relative to this docket? Mr. Dodge, is there anything  
7 you would like to present, or?

8 MR. DODGE: Only to indicate that Roger  
9 Swenson on behalf of US Mag is here. If there are any  
10 questions, he'd be happy to be sworn. Other than  
11 that, obviously US Mag supports approval of the  
12 agreement.

13 HEARING OFFICER: Thank you. Is there any  
14 other participant that desires to present any evidence  
15 or information relative to this docket?

16 Okay, thank you very much. And I'll note for  
17 the record it's my intent to recommend that the  
18 application be approved.

19 Now let's move to the three, we'll call them  
20 the QF dockets: 178, 179, and 183.

21 MR. REEDER: Shall we dispose of Tesoro  
22 first, since it may be fairly simple? Docket No. 183?  
23 Or do you want to do all three of them together?

24 HEARING OFFICER: Oh, however you'd like,  
25 Mr. Reeder. Go -- please go right ahead.

1 MR. REEDER: I think Rocky Mountain has filed  
2 an application for approval of the Tesoro contract.

3 HEARING OFFICER: Uh-huh.

4 MR. REEDER: The Division has filed a  
5 memorandum recommending its approval. I have nothing  
6 further to add, and would ask that you approve it.

7 HEARING OFFICER: Thank you. And I'd like to  
8 mark the application as RMP 1 in this docket and the  
9 Division memo as Division 1.

10 And with respect to the Division, I'm  
11 assuming this -- the memorandum represents the  
12 substance of the testimony that the Division would  
13 offer today --

14 MS. BURTON-LEE: Yes, your Honor.

15 HEARING OFFICER: -- if it were requested to?  
16 Thank you.

17 MS. BURTON-LEE: And again, Mr. Peterson is  
18 available for questions.

19 HEARING OFFICER: Any objection to receiving  
20 those two documents into evidence? Then they'll be  
21 received.

22 (Docket 183 RMP No. 1 and Division No. 1 were  
23 received.)

24 HEARING OFFICER: Anything further relative  
25 to 183? Okay.

1 MR. REEDER: Simply ask that you approve it.

2 HEARING OFFICER: Thank you. And I'll note  
3 my intention to recommend that, at least.

4 MR. REEDER: Thank you.

5 HEARING OFFICER: And now let's go off the  
6 record for just a moment.

7 (A discussion was held off the record.)

8 HEARING OFFICER: Now we'll take up 178, then  
9 179. Mr. Solander?

10 MR. SOLANDER: Again, we're here on -- this  
11 case is two applications filed on behalf of Rocky  
12 Mountain Power for approval of power purchase  
13 agreements between Rocky Mountain Power/PacifiCorp and  
14 Kennecott Utah Copper, LLC.

15 One of the agreements pertains to their  
16 refinery facility and the other to their smelter  
17 facility, both of which are qualifying facilities.  
18 The current power purchase agreements also expire at  
19 the end of this year, and the parties request that the  
20 new contracts be approved prior to the expiration of  
21 the current contracts on December 31, 2011.

22 Mr. Clements is here to take any questions.  
23 And we would ask that the applications in each docket  
24 be marked as RMP 1 and admitted to the record.

25 HEARING OFFICER: Thank you. Any objection?

1 MS. BURTON-LEE: No, your Honor.

2 HEARING OFFICER: They'll be received.

3 (Docket 178 RMP No. 1 and Docket 179 RMP No. 1  
4 were received.)

5 HEARING OFFICER: Ms. Burton-Lee?

6 MS. BURTON-LEE: And in this -- these two  
7 dockets, No. 178, 179, again, the Division has filed  
8 comments in each of the dockets. And the Division  
9 would again request that those comments in each docket  
10 be marked as Exhibit 1, respectively.

11 And Mr. Peterson is available for questions  
12 by the Commission as well as other parties if there  
13 are any questions.

14 HEARING OFFICER: Any objection to receiving  
15 those memoranda into evidence? Then they'll be  
16 received.

17 (Docket 178 Division 1 and Docket 179  
18 Division 1 were received.)

19 HEARING OFFICER: And I'll note my intention  
20 to recommend approval of those. Now we'll take up  
21 Docket No. 181. Mr. Solander?

22 (A discussion was held off the record.)

23 MR. SOLANDER: This is the application of  
24 Rocky Mountain Power -- or a petition of approval,  
25 rather, of the Electric Service Agreement between

1 Rocky Mountain Power and Kennecott Utah Copper, LLC  
2 under which the Company will provide backup and  
3 supplemental electric service to Kennecott following  
4 termination of the parties' current contracts on  
5 December 31, 2011.

6 Concurrently with the petition for approval  
7 Rocky Mountain Power filed the direct testimony of  
8 Paul H. Clements on October 13, 2011, in which  
9 Mr. Clements provides a brief description and a  
10 comparison of the 2012 agreement and the 2011  
11 agreement between Rocky Mountain Power and Kennecott.

12 Mr. Clements is here today to answer any  
13 questions from the Bench or from the other parties.  
14 And Rocky Mountain Power would request that the  
15 petition for approval be marked as RMP No. 1, and the  
16 direct testimony of Paul Clements be marked as RMP  
17 No. 2, and they both be admitted into the record as  
18 evidence.

19 HEARING OFFICER: Are there parties who  
20 desire to cross examine Mr. Clements?

21 MS. BURTON-LEE: No, your Honor.

22 MR. REEDER: We have no desire to, thank you.

23 HEARING OFFICER: Is there any objection to  
24 receiving the documents into evidence as Mr. Solander  
25 described them?

1 MR. REEDER: No objection.

2 MS. BURTON-LEE: No, your Honor.

3 HEARING OFFICER: Okay. Then they'll be  
4 received into evidence.

5 (Docket 181 RMP Nos. 1 and 2 were received.)

6 HEARING OFFICER: Thank you. Ms. Burton-Lee?

7 MS. BURTON-LEE: Again, the Division filed  
8 comments on November 7th with its recommendations, and  
9 we would ask that those comments be identified as the  
10 Division's Exhibit 1. And the Division's  
11 recommendations of course are set out in those  
12 comments, and we would ask that those recommendations  
13 be part of any order.

14 We would also like to indicate on the record  
15 that the Division has reviewed the comments filed by  
16 the Office, and the Division would support and agree  
17 with all three of the recommendations submitted by the  
18 Office as well.

19 HEARING OFFICER: Thank you.

20 MS. BURTON-LEE: And of course Mr. Peterson  
21 is available for questions as to the Division's  
22 comments. Thank you.

23 HEARING OFFICER: Are there any questions for  
24 Mr. Peterson relative to this -- to the memorandum?

25 MR. REEDER: I have no questions of

1 Mr. Peterson. I would have some comments on his  
2 recommendations at the appropriate time.

3 HEARING OFFICER: Thank you. I'd like to  
4 hear the comments, Mr. Reeder, but let's hear from the  
5 Office first, and then.

6 Mr. Proctor?

7 MR. PROCTOR: Thank you. Mr. Gimble has also  
8 submitted comments upon this Electric Service  
9 Agreement of November 7, 2011. There is one  
10 correction that we wish to make. Mr. Gimble.

11 MR. GIMBLE: It's -- the correction is on  
12 page 4 of the Office's memorandum. It's under Results  
13 and Impacts. If you go down 1, 2, 3, approximately I  
14 would say about 12 lines, it says: "Kennecott would  
15 receive a very small benefit." That should read  
16 "detriment." That's the only correction.

17 HEARING OFFICER: Thank you.

18 MR. PROCTOR: And with that, your Honor, the  
19 Office would move to admit into evidence those  
20 comments from November 7th.

21 HEARING OFFICER: Thank you. Any objections?

22 MS. BURTON-LEE: No.

23 MR. SOLANDER: No objections.

24 MR. REEDER: No objections.

25 HEARING OFFICER: Then they are received as



1 Office Exhibit 1 in this docket.

2 (Docket 181 Office No. 1 was received.)

3 MR. PROCTOR: And Mr. Gimble is available for  
4 cross.

5 HEARING OFFICER: Any cross examination for  
6 Mr. Gimble?

7 MS. BURTON-LEE: None from the Division.

8 MR. REEDER: Again, I have some comments on  
9 his recommendations at the appropriate time.

10 HEARING OFFICER: Now is the time,  
11 Mr. Reeder.

12 MR. REEDER: Okay. Number one, there are  
13 confidential and non-confidential versions of the  
14 memorandum from both the Office and the DPU in the  
15 file. The confidential should remain confidential.  
16 The non-confidential can, of course, be public. We  
17 make that observation with respect.

18 HEARING OFFICER: Thank you.

19 MR. REEDER: Number two, there are three  
20 recommendations, one in common. The first is the  
21 recommendation that the scalers in the contract be  
22 eliminated. The reason for the scalers is we're  
23 trying to resolve a problem that has not yet been  
24 resolved by the Commission, and that is how will the  
25 EBA be implemented.

1           We don't know whether it will be implemented  
2 on an annual basis -- in which case for Kennecott it  
3 doesn't work because we're only on the system four  
4 months -- or whether it'll be implemented in some  
5 other way. We've got to find a solution.

6           Scalers was the solution we've employed,  
7 guessing about what the implementation would look like  
8 in the future. It may be the best outcome, we don't  
9 know. It may be unwise to preclude us from  
10 contractually selecting the best remedy for the  
11 inequities or potential inequities in the EBA until we  
12 know how the Commission is going implement it.

13           So I would ask that you not preclude the use  
14 of scalers as a tool for addressing a problem that we  
15 don't know whether or not will occur. This is a  
16 problem we just don't know the outcome of yet. We're  
17 still awaiting the final Commission action with  
18 respect to it.

19           With respect to the 75-day filing, I would  
20 note that given the likelihood that Rocky Mountain  
21 will file an application sometime in February for a  
22 rate increase, that case may not be over with by the  
23 time we have to file the next case.

24           That can create a certain amount of hardship  
25 about not knowing what rates the Commission might

1 determine or other changes the Commission might make  
2 in its rate case before we complete our contract in  
3 the next year.

4           So I, while I appreciate the need to have the  
5 contract filed timely and to be acted upon timely, I  
6 would suggest that we at least let the Commission  
7 finish its work before we have to complete our  
8 contractual work and file an application with the  
9 Commission.

10           With respect to lump-sum payments, again,  
11 we're anticipating an outcome in the EBA case that may  
12 give to Kennecott, because of its unique load  
13 structure, the opportunity to avoid carry costs by  
14 making a lump-sum payment.

15           Again, we're guessing about what the  
16 Commission's order might be and how it would be  
17 implemented. We would encourage you to allow us to  
18 continue to have that option. The DPU is entirely  
19 right, we'll have to figure out some way to make it  
20 work as we go forward.

21           I would note that, in the statute authorizing  
22 the EBA, that the statute specifically provides that  
23 the way that a contract -- that the way that an EBA  
24 account balance will be applied to a contract customer  
25 is to be determined in the contract.

1           So we -- this legislation provided that  
2 alternative. I would suggest we keep it open, knowing  
3 that we don't know what the outcome will be. With  
4 that, I'd submit it, and encourage you to recommend  
5 it.

6           HEARING OFFICER: I have a couple of  
7 questions in this area. And I'm -- Mr. Reeder, I  
8 think I'm just gonna address them to you, and then  
9 they'll be out and we'll hear from others as they  
10 would like to participate.

11           And I suppose my first relates to the time  
12 that may be necessary for a more thorough vetting of  
13 the scaler approach, when and if it is more meaningful  
14 in terms of its impact on the contract.

15           If the Applicant were to file for approval of  
16 the contract in mid-October or so and yet a hearing  
17 was necessary that examined in some detail the  
18 adjustment that is proposed in the contract, what  
19 would be the impacts of an order coming later than  
20 January 1st of the following year on the arrangements  
21 on the contract?

22           MR. REEDER: I think the best person in the  
23 room to answer that question is probably Mr. Dodge,  
24 since he had to litigate that question about what  
25 rates apply when a contract expires.

1           If the Commission issued an order that said  
2           that the terms and conditions of the contract will  
3           abide until the next contract was approved -- which  
4           was missing from the contract he had to litigate --  
5           we'd probably be okay. Because then we'd know what  
6           rates would apply during the window -- remaining  
7           period of time after the contract was approved.

8           But that may be -- may work some hardships,  
9           because rates will change because of a rate case that  
10          need to be addressed in some fashion. So we're trying  
11          to accommodate the time periods and accommodate  
12          changing rates and the unknown.

13          So the hardship to us would be the rate would  
14          be unknown. The hardship to the Company might be that  
15          the new rates might not go into effect on a timely  
16          basis, or contract adjustments that need to be made  
17          might be delayed in some fashion.

18          HEARING OFFICER: Mr. Solander, do you have  
19          a?

20          MR. SOLANDER: I would let Mr. Clements  
21          respond to that question.

22          MR. CLEMENTS: It would be the Company's  
23          position that there would not --

24          HEARING OFFICER: Before you do -- and this  
25          is a distinction between my conversations with

1 Counsel -- I'd like to put you under oath,  
2 Mr. Clements, if I may.

3 MR. CLEMENTS: Sure.

4 (Mr. Clements was duly sworn.)

5 HEARING OFFICER: Thank you.

6 MR. CLEMENTS: Regarding your question about  
7 what rates would apply if an agreement or a Commission  
8 order were not received prior to January 1st, or prior  
9 to expiration of the existing agreement, it would be  
10 the Company's position that the applicable tariff  
11 rates would apply to the customer at that point in  
12 time.

13 So a Schedule 9 or a Schedule 31 rate would  
14 apply to Kennecott in the event that a binding  
15 Electric Service Agreement were not in place at that  
16 time. And the Company would intend to bill them on  
17 the Schedule 9 or Schedule 31 rate in effect at that  
18 time.

19 HEARING OFFICER: Thank you. Does anybody  
20 have any questions based on my questions in this area,  
21 any questions for Mr. Clements?

22 Okay, thank you. I have another question in  
23 a different area. Mr. Reeder, this will -- I'll begin  
24 with you again, if I may.

25 MR. REEDER: Please, please. And I would

1 encourage you to ask questions of Mr. Dodge. He did  
2 have that question arise before this Commission with  
3 another client. And that case was litigated, so there  
4 is some record of contention over that issue and  
5 decisions on that matter.

6 HEARING OFFICER: Okay. Thank -- well,  
7 Mr. Dodge, if you'd like to -- even though this isn't  
8 directly your matter I'd appreciate your insights, if  
9 you wouldn't mind, before we leave this subject.

10 MR. DODGE: I'd be happy to. And Mr. Reeder  
11 is correct. With a US Mag contract that expired  
12 before a new one was negotiated several years ago  
13 US Mag took the position that the old contract rates  
14 applied. Rocky Mountain Power took the position that  
15 Schedule 9 rates applied.

16 And the Commission ultimately applied the new  
17 rates, that got negotiated months later,  
18 retroactively. So US Mag felt like that was an  
19 inappropriate retroactive application of rates, but we  
20 lost on that issue.

21 And I think Mr. Reeder is exactly right that  
22 the contract ought to specify that, because it does  
23 create a hardship on one side or another if we -- if  
24 you have to debate whether the rate is retroactively  
25 applied that does work a hardship on the customer

1 because then they don't know what the rate is as they  
2 go through the process.

3 And so I agree with Mr. Reeder, that ought to  
4 be indicated in the contract if there's some notion a  
5 new contract can't be in place by the time the old one  
6 expires.

7 HEARING OFFICER: Thank you. Now Mr. Reeder,  
8 regarding the lump-sum payment, is it your position  
9 that a true up would not be required in the event that  
10 this lump-sum contingency in the agreement is invoked,  
11 the lump-sum payment opportunity?

12 MR. REEDER: It depends on how the Commission  
13 chooses to implement its energy balancing account. If  
14 they do as we've asked them to do for contract  
15 customers, and that is to record monthly the costs  
16 that are the Delta and allocate those costs monthly so  
17 we know what they are, then we may be in a position to  
18 pay that amount month by month and avoid carry  
19 charges.

20 And as you can understand, on a \$10 million  
21 bill 6 percent is not a small amount. So if we could  
22 pay it and avoid the carry charges, that would be a  
23 preferred outcome. The path seems to be going to  
24 record monthly but allocate annually, in which case  
25 there will be some true up that will be necessary



1 because we won't have the amounts till they're done.

2 So it's this unknown on just how we're going  
3 to slice it -- record monthly allocate monthly, or  
4 record monthly and allocate annually -- that gives  
5 rise to, I concede, some potential need to true up,  
6 because we just don't know how it's going to be sliced  
7 and applied.

8 HEARING OFFICER: Thank you. Now, both of  
9 these areas I'd like to hear from the Division and the  
10 Office, if you have views to contribute, so let's  
11 begin first with the Division. Mr. Peterson, will you  
12 be addressing this? And if so, I would like to put  
13 you under oath if I may.

14 MR. PETERSON: I'll be sworn in.

15 (Mr. Peterson was duly sworn.)

16 HEARING OFFICER: Thank you.

17 MS. BURTON-LEE: Your Honor, could I make one  
18 comment before he testifies?

19 HEARING OFFICER: Absolutely.

20 MS. BURTON-LEE: One of the things that the  
21 Division sees is that Mr. Reeder's concerns with  
22 regard to Recommendation 3 in the EBA are concerns  
23 that are probably more appropriately addressed in the  
24 EBA proceeding and the EBA docket.

25 And we would suggest that that may be an

1 appropriate venue for that -- and docket for that  
2 issue. But Mr. Peterson is available to answer your  
3 questions. Thank you.

4 MR. PETERSON: If I may add, your Honor.  
5 Preliminarily at least the Division's view is is that  
6 this special treatment that Mr. Reeder is alluding to  
7 in the EBA docket should be the subject of a motion, a  
8 specific motion and application by Mr. Reeder that can  
9 then be evaluated by the parties and approved or  
10 disapproved by the Commission as the case may be.

11 Otherwise I have -- I'm available to answer  
12 questions.

13 HEARING OFFICER: A hypothetical question for  
14 you, if I may. In the event that the adjustment or  
15 scaler feature had significant effects, potentially --  
16 and I understand you have a different position about  
17 the effect in this particular setting.

18 But if it were significant and -- what would  
19 you expect would be necessary in terms of litigation  
20 of that issue in a docket like this one? How much  
21 time would be required? How much time would the  
22 Division need to prepare?

23 MR. PETERSON: Well, the Division would be  
24 looking, first of all, to assure itself of -- that  
25 there was some ratepayer neutrality in the issue.

1 That Kennecott wasn't being unfairly advantaged or  
2 disadvantaged, *vis-à-vis* ratepayers generally.

3 But in terms of a specific time, it would  
4 depend upon how much information that we had up front,  
5 when the parties -- well. Rocky Mountain Power would  
6 be the moving entity to have a contract approved. If  
7 we had a lot of and hopefully persuasive information  
8 supporting the contract up front then that would, of  
9 course, lessen the time necessary.

10 But I would guess that if it were something  
11 that was likely to be contentious that we would need  
12 60 to 90 days to investigate it. So this 75-day  
13 period that the Office recommended in their memorandum  
14 is kind of a compromise position on the 60 to 90 days.  
15 So that's why the Division would support that  
16 recommendation by the Office.

17 HEARING OFFICER: Thank you Mr. Peterson.  
18 Any questions for Mr. Peterson based on mine?

19 Okay. Mr. Proctor, does the Office desire to  
20 address these two subjects?

21 MR. PROCTOR: Yes. Mr. Gimble should be  
22 sworn, thank you.

23 HEARING OFFICER: Thank you. Mr. Gimble.

24 (Mr. Gimble was duly sworn.)

25 HEARING OFFICER: Thank you.

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DANIEL GIMBLE,

called as a witness, having been duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PROCTOR:

Q. Mr. Gimble, on page 5 of the Office's memorandum you list three recommendations. Could you first address the second recommendation that calls for a 75-day filing before a hearing?

A. Yes. We believe that we would need over two months to address an application where there was a material -- potentially a material impact resulting from the application of the monthly energy scalers. There would probably be a need to at least do one round of discovery. Depending on the time set, you know, that turnaround could be approximately, you know, two to three weeks. At times that prompts, as you well know, another round of discovery and, you know. The discovery process itself could take over a month.

Additionally, in talking about this contract with Rocky Mountain Power representatives we understand the next contract could even be more complicated. There could be a backup power dimension that isn't there in the current contract that could be

1 there in the next contract. So the contract could be  
2 more complicated than it is this time as well.

3 MR. PROCTOR: May I ask another question?

4 HEARING OFFICER: Absolutely.

5 Q. (By Mr. Proctor) Mr. Gimble, on page 4 of  
6 your memorandum -- of the Office's memorandum you  
7 discuss the res -- in results and impacts. Did the  
8 Office attempt to analyze the effect of scalers on the  
9 loads that one may anticipate from this contract?

10 A. We did. We filed formal discovery with the  
11 Company. They provided an analysis. And that  
12 analysis is attached in Confidential Attachments 1 and  
13 2. In this case the impacts actually went against  
14 Kennecott, and so they're very minimal.

15 That could change, depending on what scalers  
16 are actually used. I mean, they're using fairly dated  
17 scalers and applying it to the expected Kennecott load  
18 for 2012. If the actual loads are different than the  
19 anticipate -- the forecasted loads, then the impacts  
20 could be different as well.

21 Q. And so on page 4, under Results and Impacts,  
22 you're referencing the fact that the monthly loads for  
23 the 2012 contract could be more or less than  
24 projected; is that correct?

25 A. That's correct.

1 Q. And finally, that there could be the  
2 development of additional or different scalers to be  
3 applied to the 2012? Or would that be inapplicable to  
4 the next contract?

5 A. The scalers would be -- I anticipate the  
6 Company would develop different scalers and apply --  
7 based on more recent information, apply them to the  
8 next contract.

9 Q. And so our request -- the Office's request  
10 for that 75 days, is that in part to address these  
11 questions that you've raised on page 4 under Results  
12 and Impacts?

13 A. Yes.

14 Q. Okay. I'd also like you to address,  
15 Mr. Gimble, the third recommendation made with respect  
16 to the lump-sum payment and the need for some  
17 Commission oversight of that payment.

18 A. Yes. Based on our review of the contract we  
19 believe that there needs to be a compliance filing and  
20 a hearing to determine both the amount of the payment  
21 and the means to true up payments based on interim  
22 rates.

23 The EBA will, when it goes into force, will  
24 initially be set on interim rates. It'll be subject  
25 to a DPU audit. It'll probably take a good chunk of a

1 year to complete that audit. So we just want to make  
2 sure there's a defined and specific process in place  
3 that deals with the amount of the payment and the  
4 process by means to true up that payment to actuals.

5 MR. PROCTOR: Thank you, your Honor.

6 Mr. Gimble would be available for cross or your own  
7 questions.

8 HEARING OFFICER: Thank you. Any questions  
9 for Mr. Gimble?

10 MR. SOLANDER: No questions, but we'd ask  
11 that Mr. Clements have the opportunity to comment on  
12 the recommendations.

13 HEARING OFFICER: Any other questions?

14 And I have no further questions. And  
15 Mr. Clements?

16 MR. CLEMENTS: Sure. Your Honor, I'd just  
17 like to offer the Company's opinion on the individual  
18 recommendations, just to make sure that's clear on the  
19 record. Regarding Recommendation No. 1, which states  
20 that the energy scalers used in the ESA not be viewed  
21 as precedent setting.

22 The Company would agree that they should not  
23 be viewed as precedent setting; however, the Company  
24 agrees with Mr. Reeder's comments in that no order  
25 should preclude their use in future agreements. I

1 think to do so would be unfair, and perhaps there is a  
2 useful application of them in future agreements.

3 So we would agree that they should not be  
4 precedent setting; however, we expressed that we don't  
5 think they should be precluded from use in future  
6 agreements.

7 Regarding the second recommendation with the  
8 75 days between an application filing and the hearing.  
9 While the Company is not opposed to such a  
10 requirement, the Company believes that there's  
11 adequate avenues to address timing and scheduling once  
12 the application is made.

13 Typically once an application is made there's  
14 a scheduling procedure that occurs. If any  
15 intervening party feels that they need time between  
16 the application filing and a hearing date, those  
17 concerns can be addressed at the time of scheduling  
18 for that particular docket.

19 So to set a timeline for a future docket I  
20 don't believe would be proper in this proceeding. And  
21 I feel like the parties would have the ability to  
22 address the timeline at the appropriate time in that  
23 docket.

24 Regarding the third recommendation with the  
25 lump-sum payment and the energy balancing account.



1 The Company agrees with the Division that the  
2 discussion of the particulars of the EBA is better  
3 left to another proceeding.

4 That said, it's the Company's opinion that  
5 the application of any payment, be it a lump-sum  
6 payment or any other payment, in the context of an EBA  
7 in regards to Kennecott is not something that the  
8 Company can address in a vacuum, so to speak, as the  
9 EBA affects all customers and the Company.

10 Therefore, anything that happens in the  
11 Kennecott contract needs to be looked at in the larger  
12 context of the energy balancing account as a whole.  
13 Therefore, the Company is somewhat indifferent to the  
14 third recommendation.

15 And if a compliance filing and a hearing is  
16 required by the Commission, the Company would comply  
17 with that filing.

18 HEARING OFFICER: Thank you. Any questions  
19 for Mr. Clements?

20 MR. REEDER: No questions.

21 MS. BURTON-LEE: No questions.

22 HEARING OFFICER: And I have none. Is there  
23 anything further that we need to take up before --

24 MR. REEDER: One, one response.

25 HEARING OFFICER: -- we adjourn? Yes,

1 Mr. Reeder.

2 MR. REEDER: One response, if we might. I'm  
3 not sure that in this contract approval proceeding we  
4 need to necessarily tie our hands in the EBA  
5 proceeding on how we're going to do that. What is  
6 resolved there and what is resolved in the contract is  
7 really spelled out by statute.

8 And we need to be a little careful about what  
9 kinds of conditions we impose in a contract approval  
10 proceeding that may be contrary to the statute and may  
11 or may not be appropriate for dealing in those  
12 proceedings.

13 We are dealing, as Mr. Clements aptly points  
14 out, with significant unknowns. And as Mr. Gimble  
15 points out, we expect this next rate case to address  
16 some of those unknowns that we were trying to address  
17 in the contract.

18 It would be most unfortunate to force us to  
19 try to resolve in a contract what the Commission may  
20 have had the opportunity to resolve in the next rate  
21 case. The most obvious one is standby rates. I  
22 expect that that will be a topic in the next rate case  
23 that will have to be addressed.

24 And can we please have an order in that case  
25 before we have to contractually negotiate where we're

1 gonna go with it?

2 HEARING OFFICER: Thank you, Mr. Reeder.

3 Any other comments or statements?

4 Thank you. This has been very helpful. I  
5 appreciate the information that's been provided. And  
6 we'll be adjourned.

7 (The hearing was concluded at 10:43 a.m.)

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C E R T I F I C A T E

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE         )

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 35, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 27th DAY OF November, 2011.

Kelly L. Wilburn, CSR, RPR  
Utah CSR No. 109582-7801

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