

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of a New Electric Service)	<u>DOCKET NO. 12-035-94</u>
Agreement between Rocky Mountain)	
Power and Kennecott Utah Copper, LLC)	
)	
In the Matter of the Application of Rocky)	<u>DOCKET NO. 12-035-95</u>
Mountain Power for Approval of the Power)	
Purchase Agreement between PacifiCorp)	
and Kennecott Utah Copper LLC (Smelter))	
)	
In the Matter of the Application of Rocky)	<u>DOCKET NO. 12-035-96</u>
Mountain Power for Approval of the Power)	
Purchase Agreement between PacifiCorp)	
and Kennecott Utah Copper LLC (Refinery))	<u>REPORT AND ORDER</u>
)	

ISSUED: December 4, 2012

SYNOPSIS

The Commission approves an energy service agreement and two purchase power agreements between PacifiCorp, doing business in Utah as Rocky Mountain Power, and Kennecott Utah Copper LLC. The energy service agreement will be in effect for two years, from January 1, 2013, through December 31, 2014. The purchase power agreements are one year in duration and will be effective for calendar year 2013.

By The Commission:

These matters are before the Commission on the applications of PacifiCorp, doing business in Utah as Rocky Mountain Power (“Utility”), for approval of an electric service agreement (the “ESA”) and two purchase power agreements (the “Smelter” and “Refinery” Agreements, respectively) between the Utility and Kennecott Utah Copper, LLC (“Kennecott”).

PROCEDURAL HISTORY

The Utility submitted its ESA application on September 14, 2012 and its Smelter and Refinery applications on September 10, 2012. The ESA was filed under seal because the

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Utility Company considers it a confidential document. The Division of Public Utilities (“Division”) and the Office of Consumer Services (“Office”) filed separate memoranda on October 29, 2012, summarizing their respective analyses and expressing their recommendations regarding the ESA, and the Smelter and Refinery Agreements. As to the ESA, the Division recommended approval while the Office recommended a minor revision, i.e., that Kennecott should be subject to a Renewable Energy Credit (“REC”) Revenues Surcharge, if one is ordered, in addition to the REC Revenues Credit. As to the Smelter and Refinery Agreements, both the Division and the Office commented on the need to correct errors in Exhibit E (Pricing) of both agreements. These errors were initially identified by the Utility after it had filed its applications.

On November 20, 2012, the Utility filed petitions asking the Commission to accept amendments to all three agreements, in response to the recommendations of the Division and Office. On that date, the Utility also filed a Settlement Stipulation (“Settlement”) executed by representatives of the Utility, the Division and the Office. The Settlement declares the parties’ support for Commission approval of the ESA, and the Smelter, and Refinery Agreements, as amended. The parties to the Settlement state that, with the amendments filed on November 20, 2012, each of the agreements is in the public interest and should be approved.

On November 29, 2012, the Commission held a duly-noticed hearing in these three dockets. During the hearing each party to the Settlement testified in support of the ESA, and the Smelter, and Refinery Agreements, as amended, and recommended their approval. No party offered any other evidence. Consequently, at the conclusion of the hearing the Commissioners authorized the presiding officer to issue an oral ruling approving the three

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applications and the three agreements, as amended. This written order memorializes that oral ruling.

DISCUSSION, FINDINGS AND CONCLUSIONS

I. The ESA

The ESA is a modified form of an existing agreement expiring December 31, 2012. The proposed contract term is two years beginning January 1, 2013 and ending December 31, 2014. Kennecott has entered into the ESA to receive back-up, 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 on the Utility's Schedules 9 and 31. (Various ESA 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.)

II. The Smelter Agreement

Kennecott owns, operates, and maintains a waste-heat-fired steam cogeneration facility for the generation of electric power located at its Magna, Utah smelter. The facility is operated as a qualifying facility ("QF"), as defined in 18 C.F.R Part 292, with a nameplate capacity rating of 31.8 megawatts ("MW"). The facility is referred to informally as the Kennecott-Smelter QF. All interconnection requirements have been met, and the Kennecott-Smelter QF is fully integrated with the Utility's system.

Under the Smelter Agreement, Kennecott has the option, but not the obligation, to deliver to the Utility the net electric power output generated by the Kennecott-Smelter QF.

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Kennecott is not permitted to sell any portion of the net output to parties other than the Utility; however, Kennecott is allowed to offset its own retail load before selling any excess power.

Kennecott estimates the average net monthly output of the facility will be about 14,000 megawatt-hours (“MWh”).

Pricing under the Smelter Agreement varies by month and by hour. The Smelter Agreement, as amended, designates high load hours as Monday through Friday from 7:00 a.m. to 11:00 p.m. Additionally, higher monthly prices during July through September provide an incentive for Kennecott to generate power during the months of high demand on the Utility’s system. The Smelter Agreement, as initially filed, contained definitional and computational errors in these pricing terms which the Utility corrected in its petition for approval of amended contract, filed November 20, 2012.

III. The Refinery Agreement

Kennecott owns, operates, and maintains near Magna Utah a waste-heat-fired steam cogeneration facility for the generation of electric power. The facility is referred to informally as the Kennecott-Refinery QF. The facility is operated as a qualifying facility (“QF”), as defined in 18 C.F.R Part 292, with a nameplate capacity rating of 7.54 megawatts (“MW”). The average monthly output is expected to be about 5.4 MW. All interconnection requirements have been met, and the Kennecott-Refinery QF is fully integrated with the Utility’s system.

Under the Refinery Agreement, Kennecott has the option, but not the obligation, to sell to the Utility all of the Kennecott-Refinery QF net output. Kennecott estimates the

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average net monthly output of the facility will be about 3,900 MWh. While Kennecott is not permitted to sell any portion of the output to parties other than the Utility, Kennecott may offset its own retail load before selling any excess power under the Agreement.

As with the Smelter Agreement, pricing under the Refinery Agreement varies by month and by hour. The Refinery Agreement, as amended, designates high load hours as Monday through Friday from 7:00 a.m. to 11:00 p.m. Additionally, higher monthly prices during July through September provide an incentive for Kennecott to generate power during the months of high demand on the Utility's system. Like the Smelter Agreement, the Refinery Agreement contained definitional and computational errors in the pricing terms which the Utility corrected in its petition for approval of amended contract, filed November 20, 2012.

We find the ESA, Smelter, and Refinery and Agreements, as discussed in the Utility's applications and petitions, in the memoranda of the Division and OCS, and in the Settlement are adequately shown to be in the public interest. We base these findings on the representations in the Settlement and on the uncontested testimony of the settling parties that the pricing and other terms of each agreement, as amended, are just, reasonable and in the public interest.

The Smelter and Refinery Agreements constitute "New QF Contracts" under the PacifiCorp Inter-Jurisdictional Cost Allocation Protocol. Consequently, costs associated with the Smelter and Refinery Agreements are allocated as system resources, unless any portion of those costs exceeds the costs the Utility would have otherwise incurred acquiring comparable resources. In that event, the Revised Protocol assigns those excess costs on a situs basis to the

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State of Utah. The Utility represents that its costs under these Agreements do not exceed the costs it would have incurred acquiring other market resources. The Division accepts this representation based upon its prior analysis of the Utility's avoided cost reports. We acknowledge and rely upon these statements in reaching the findings and conclusions in this order.

ORDER

For the reasons discussed above, the Commission approves the ESA, and the Smelter, and Refinery Agreements, as amended in the petitions filed by the Utility on November 20, 2012. As with past practice, the Utility shall provide to the Division, at least quarterly, data reflecting the hourly power purchased under the Smelter and Refinery Agreements so that the Division may monitor contract performance.

DATED at Salt Lake City, Utah this 4th day of December, 2012.

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#239647

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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 4th day of December, 2012, a true and correct copy of the foregoing Report and Order, was served upon the following as indicated below:

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