

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of a New
Electric Service Agreement
between Rocky Mountain Power
and Kennecott Utah Copper, LLC,

Docket No. 12-035-94

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. 12-035-95

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. 12-035-96

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HEARING  
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TAKEN AT:

Heber M. Wells Building
160 East 300 South, Room 451
Salt Lake City, Utah 84111

DATE:

Thursday, November 29, 2012

TIME:

9:00 a.m. to 9:26 a.m.

REPORTED BY:

Michelle Mallonee, RPR

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APPEARANCES

DAVID CLARK

Administrative Hearing Judge

FOR ROCKY MOUNTAIN POWER:

DANIEL E. SOLANDER, ESQ.

ROCKY MOUNTAIN POWER

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Salt Lake City, Utah 84111

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Senior Power Marketing Originator PacifiCorp

FOR DIVISION OF PUBLIC UTILITIES:

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CHARLES PETERSON

Technical Consultant

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FOR THE OFFICE OF CONSUMER SERVICES

CHERYL MURRAY

Utility Analyst

FOR KENNECOTT UTAH COPPER, LLC, AND TESORO
REFINING & MARKETING COMPANY:

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JUDICIAL NOTICE

Division's Memo in Docket 12-035-103

18

(Retained by counsel)

Division's Memos in Docket Nos.

18

12-035-94, 12-035-95, and 12-035-96

(Retained by counsel)

1

Hearing

2

November 29, 2012

3

PROCEEDINGS

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THE COURT: We'll be on the record.

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This is the time and place duly noticed for a

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hearing in three dockets that relate to Rocky Mountain and

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Kennecott Utah Copper, LLC. They are Docket Nos. 12-035-94,

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12-035-95, 12-035-96. They address an electric service

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agreement between the two parties I mentioned, as well as

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purchase power agreements between the two parties, one of

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which relates to Kennecott's smelter facility and the other

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relates to Kennecott's refinery facility.

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So we'll begin this morning by taking appearances

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of counsel.

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MR. SOLANDER: Thank you, Mr. Clark. My name

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is Daniel Solander, appearing on behalf of Rocky Mountain

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Power. And I have with me at counsel table, Paul Clements,

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who is available as a witness, should one be necessary.

19

THE COURT: Thank you.

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MR. JETTER: Justin Jetter for the Division of

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Public Utilities. And with me is Charles Peterson, also with the

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Division of Public Utilities.

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MS. MURRAY: I'm Cheryl Murray with the Office of

24

Consumer Services. And our attorney is not present today.

25

THE COURT: Thank you, Ms. Murray. Any others?

1 Thank you very much.

2 Mr. Solander, how do you propose to proceed this
3 morning?

4 MR. SOLANDER: I would propose just briefly
5 summarizing the filing the Company made on November 20th, in
6 which we filed amended electric service agreements, amended
7 non-firm qualifying power purchase agreements for both the
8 smelter and refinery contract, and the stipulation. As part of the
9 stipulation, the parties agreed that the ESA and the two power
10 purchase agreements are in the public interest. And as you are
11 aware, the Utah Code authorizes the Commission to approve a
12 settlement as long as the settlement is just and reasonable in
13 results.

14 And I have with me Mr. Clements, who is available
15 to give a brief statement regarding the stipulation and the power
16 purchase contracts and the electric service agreement in
17 support of the stipulation.

18 THE COURT: Thank you.

19 Mr. Clements, would you raise your right hand,
20 please.

21 Do you solemnly swear that the testimony you are
22 about to give shall be the truth, the whole truth, and nothing but
23 the truth?

24 MR. CLEMENTS: I do.

25 THE COURT: Thank you.

1 PAUL CLEMENTS, having been first duly sworn,
2 testified as follows:

3 TESTIMONY OF MR. CLEMENTS

4 MR. CLEMENTS: I'll begin with the electric service
5 agreement and a brief summary of the events that have
6 occurred leading up to the stipulation.

7 THE COURT: Would you mind spelling your name
8 for the reporter and describe your position with the company
9 again, if you would, please.

10 MR. CLEMENTS: Certainly. My name is Paul
11 Clements, C-L-E-M-E-N-T-S. I'm a senior power marketer
12 originator for PacifiCorp. I'm responsible for negotiating electric
13 service agreements and qualifying facility agreements.

14 THE COURT: Thank you.

15 MR. CLEMENTS: Thank you. So beginning with
16 the Electric Service Agreement, this would be Docket No.
17 12-035-94. On September 14, 2012, Rocky Mountain Power
18 filed a petition for approval of a proposed electric service
19 agreement between Kennecott and Rocky Mountain Power. The
20 agreement covers a two-year time period, 2013 and 2014, and
21 covers the terms and conditions under which Rocky Mountain
22 Power will provide retail electric service to Kennecott Utah
23 Copper.

24 On October 29, 2012, the Division filed comments
25 recommending the Commission approve the proposed ESA. The

1 Division concluded that the contract terms and pricing appear to
2 be just, reasonable, and in the public interest.

3 On October 29, 2012, the Office of Consumer
4 Services filed a recommendation with the Commission in which
5 it noted that the Electric Service Agreement failed to make clear
6 that Kennecott would be subject to certain renewable energy
7 credit revenue surcharges, if one is so ordered by the
8 Commission. And the Office recommended that the agreement
9 be amended to reflect the fact that Kennecott will be subject to
10 such charges.

11 On November 20, Rocky Mountain Power filed an
12 application with an amended electric service agreement, in
13 which language was added consistent with the Office of
14 Consumer Services' recommendation, making it clear that
15 Kennecott is subject to certain renewable energy credit
16 revenues, surcharges in the event that they're ordered by the
17 Commission.

18 On that same date, November 20, 2012, the
19 Company also filed a stipulation in which all parties--the
20 Division, the Office, Kennecott, and Rocky Mountain Power--
21 recommend that the Commission approve the Electric Service
22 Agreement between Rocky Mountain Power and Kennecott Utah
23 Copper.

24 And I can testify that the Amended Electric Service
25 Agreement has addressed the issues raised by the Office of

1 Consumer Services in their October 29, 2012, memo, and
2 recommend that the Commission approve the Electric Service
3 Agreement.

4 THE COURT: Thank you.

5 MR. CLEMENTS: If no further questions, I'll move
6 to the qualifying Facility Power Purchase Agreements, which
7 would be Docket 12-035-95 and 12-035-96.

8 On September 10, 2012, Rocky Mountain Power
9 filed with the Commission applications for approval of two
10 qualifying Facility Power Purchase Agreements between
11 Kennecott Utah Copper and Rocky Mountain Power. One is for
12 the Kennecott smelter, the other is for the Kennecott refinery.
13 And I will address them at the same time.

14 On October 29, 2012, the Division filed an Action
15 Request Response, in which they stated that they recommend
16 the Commission approve both power purchase agreements, but
17 recommended that the parties meet and find a way to update or
18 amend the contracts with a revised Exhibit E.

19 There were two errors that were identified in Exhibit
20 E. Exhibit E is the portions of the power purchase agreement
21 that set forth the pricing and the definitions of "heavy load
22 hours" and "light load hours." Certain errors were found in the
23 pricing and in the definitions of "light load hours" and "heavy
24 load hours." And the Division recommended that those errors be
25 corrected prior to having those power purchase agreements be

1 approved.

2 On November 20, 2012, the Company filed, for
3 approval, amendments to both power purchase agreements, in
4 which the Exhibit E, as originally filed, was replaced with a new
5 Exhibit E in each power purchase agreement. The new Exhibit
6 Es reflect the recommended changes that the Division stated in
7 their memo, and they correct the errors that were found in the
8 original Exhibit Es.

9 And coincidentally, on November 20 of 2012, the
10 Company filed a stipulation in which all parties recommend
11 approving the amended power purchase agreements. And I can
12 testify that the changes that were made and reflected in the
13 amendments address all of the issues raised by the Division.
14 And I recommend the Commission approve them.

15 THE COURT: Thank you, Mr. Clements. Does that
16 conclude your statement?

17 MR. CLEMENTS: Yes, it does.

18 THE COURT: Thank you.

19 Does anyone have any questions for Mr. Clements?

20 Neither do I.

21 Thank you for your testimony.

22 Anything further to present, Mr. Solander, on
23 these--

24 MR. SOLANDER: No, your Honor.

25 THE COURT: --matters?

1 Mr. Jetter, before you proceed, I just have a
2 question.

3 The copy of the settlement stipulation that I have
4 shows signature lines for Ms. Schmid and Mr. Parker, but I don't
5 have the pages.

6 Have they been filed and I missed them?

7 MS. SCMID: Could we have just a moment?

8 THE COURT: Sure. We'll be off the record.

9 (A discussion was held off the record.)

10 MR. REEDER: I'm Bob Reeder on the back row for
11 Kennecott. We filed them, probably, on Monday. So the
12 internal mail probably will deliver them to you on Friday.

13 THE COURT: Did you get that on the record, Mr.
14 Reeder's statement?

15 THE REPORTER: Yes.

16 THE COURT: That's good.

17 MR. JETTER: Can we just quickly note for the
18 record on that, that on behalf of the Division, I believe it was
19 executed by Chris Parker, the director of the Division.

20 THE COURT: Right. Thank you.

21 Mr. Jetter?

22 MR. JETTER: I guess at this time, the Division
23 would--

24 (Mr. Jetter conferred with his witness.)

25 THE COURT: I think what I'm asking is, is there

1 anything that you want to present in support of the settlement,
2 in addition to the fact that it's been executed by the Division?

3 MR. JETTER: No. I would just proffer that the
4 Division has signed this stipulation, and it remains reflective of
5 the Division's position on this. And the Division believes that
6 approval of the final versions of the documents that are
7 reflected in the settlement in Dockets 035-94, 95, and 96 would
8 result in rates that are just, reasonable, and in the public
9 interest.

10 THE COURT: Thank you.

11 Ms. Murray, I notice that Ms. Beck is also a
12 signatory on behalf of the Office.

13 MS. MURRAY: That is correct, yes.

14 THE COURT: And the Office remains supportive of
15 the agreement as well?

16 MS. MURRAY: We do. I would like to add a
17 comment, if I may.

18 THE COURT: Please do. Would you like to do it
19 under oath?

20 MS. MURRAY: Sure.

21 THE COURT: All right. Do you solemnly swear
22 that the testimony you are about to give shall be the truth, the
23 whole truth, and nothing but the truth?

24 MS. MURRAY: I do.

25 THE COURT: Thank you. And would you, again,

1 state your name, spell it for the reporter, and describe your
2 position with the Office, and then make whatever statement
3 you'd like to.

4 MS. MURRAY: Yes. My name is Cheryl Murray. I'm
5 a utility analyst with the Office of Consumer Services,
6 C-H-E-R-Y-L, M-U-R-R-A-Y.

7 THE COURT: Thank you.

8 CHERYL MURRAY, having been first duly sworn,
9 testified as follows:

10 TESTIMONY OF MS. MURRAY

11 MS. MURRAY: Mr. Clements has, I think, clearly
12 articulated our position regarding the ESA, where we, in our
13 initial comments, were concerned that there was no provision for
14 a solar surcharge.

15 He did not, however, mention that on October 29,
16 we also submitted memos regarding the QF agreements in
17 Docket 12-035-95 and 12-035-96. We had similar
18 recommendations to the Division. And they have been
19 addressed in the stipulation and the amendments to that.

20 I just wanted it noted that we had also provided
21 comments. Thank you.

22 THE COURT: Thank you very much.

23 Any additional comment or information relative to
24 these three dockets? Thank you very much.

25 Then we'll turn to Docket No. 12-035-103, which is

1 an application of Rocky Mountain Power for approval of a Power
2 Purchase Agreement between PacifiCorp and Tesoro Refining &
3 Marketing Company. And this is the time and place duly noticed
4 for the hearing in this matter, as well.

5 And, Mr. Solander, how would you like to proceed?

6 MR. SOLANDER: I'd just introduce the contract by
7 stating that on October 26, 2012, Rocky Mountain Power filed
8 an application for approval of the Power Purchase Agreement
9 between PacifiCorp and Tesoro Refining & Marketing Company.
10 The existing agreement between Tesoro and PacifiCorp expires
11 on December 31, 2012. This agreement is to begin when that
12 agreement expires. And we filed in order that there would be no
13 lapse of time between the two. Mr. Clements can discuss the
14 specifics of the contract, if that would be helpful.

15 I would note that the Division filed comments in
16 support of the approval of the contract. And no party is
17 opposing it at this time.

18 THE COURT: Thank you very much.

19 Mr. Clements, let me remind you, you are under
20 oath. And please make any statement about the contract that
21 you would like to.

22 FURTHER TESTIMONY OF MR. CLEMENTS

23 MR. CLEMENTS: Thank you. As Mr. Solander
24 noted, the contract was filed for approval on October 26, 2012.
25 The contract is for a term of one year, commencing January 1,

1 2013. The agreement provides for the sale to PacifiCorp of
2 energy to be generated by Tesoro up to 25 megawatts of
3 nameplate capacity from a gas-fired cogeneration facility that is
4 owned by Tesoro and located in Salt Lake City, Utah.

5 I represent that the agreement was--the prices in
6 the agreement were calculated pursuant with the Commission's
7 approved methodology for what it costs and, therefore, just and
8 reasonable and in the public interest.

9 I also echo Mr. Solander's comments that no one
10 has raised any objections or concerns with the agreement. And I
11 recommend approval.

12 THE COURT: Thank you.

13 Any questions for Mr. Clements?

14 Mr. Jetter?

15 MR. JETTER: The Division doesn't have any
16 additional information to provide here, other than just the basic
17 statement that the Action Request Response filed by the
18 Division reflects the Division's position. And as of today, our
19 position is the same, recommending that the Commission
20 approve this and it would result in just, reasonable...

21 THE COURT: We'll be off the record.

22 (A discussion was held off the record.)

23 THE COURT: On the record.

24 MR. JETTER: Just to conclude what I was saying,
25 the Division still recommends that this be approved.

1 Let me just ask that you take notice of our memo in
2 this case. And would you prefer that we introduce a witness and
3 put it on the record?

4 THE COURT: I'm happy to take administrative
5 notice of it, if there's no objection--

6 MR. SOLANDER: No objection.

7 THE COURT: --to doing so. There is none, so
8 notice will be taken.

9 (Judicial notice was taken of the Division's memo in Docket
10 12-035-103.)

11 MR. JETTER: Okay. Thank you. Can we also take
12 notice--I know we've sort of switched dockets here--of our other
13 memos in the 94, 95, 96 Kennecott?

14 THE COURT: Any objection to doing so?

15 MR. SOLANDER: No.

16 MR. JETTER: Thank you.

17 THE COURT: Motion granted. (Judicial notice
18 was taken of the Division's memos in Docket Nos. 12-035-94,
19 12-035-95, and 12-035-96.)

20 THE COURT: Thank you. Anything further to
21 present, Mr. Jetter?

22 MR. JETTER: No, sir.

23 THE COURT: Any other party desire to present
24 evidence or make any statement regarding the matters before us
25 in this docket?

1 Thank you. We'll be off the record for about five
2 minutes. So let's plan to reconvene at 25 after. Thank you.

3 (A break was taken from 9:19 a.m. to 9:24 a.m.)

4 THE COURT: On the record. Is everyone here that
5 needs to be for us to proceed? I see affirming nods.

6 I think I failed to note at the outset that I'm David
7 Clark. The Commission has authorized me to preside at this
8 hearing today.

9 And during the recess, I consulted with the
10 Commissioners, and they've authorized me to issue their ruling
11 on the four applications before us orally. And so let me do so
12 now.

13 The applications in Docket Nos. 12-035-94, 95, 96,
14 and 12-035-103 are approved. And the Commission will issue a
15 written order sometime in the near future memorializing this
16 ruling this morning.

17 Any questions or comments about my statement?

18 MR. REEDER: Nothing, other than thank you.

19 THE COURT: Thank you for very much for
20 participating this morning. And we'll be adjourned.

21 (The hearing concluded at 9:26 a.m.)

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CERTIFICATE

State of Utah)

ss.

County of Salt Lake)

I, Michelle Mallonee, a Registered Professional Reporter in and for the State of Utah, do hereby certify:

That the proceedings of said matter was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said proceedings so taken and transcribed;

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

Michelle Mallonee, RPR, CSR