

February 6, 2015

Public Service Commission of Utah
160 East 300 South, 4th Floor
Salt Lake City, UT 84114

Re: 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.
14-035-117

Dear Commissioners:

Kennecott Utah Copper LLC (“Kennecott”) would like to bring to your attention a misstatement that appears in the Commission’s Order Confirming Bench Rulings Approving Electric Service and Qualifying Facility Power Purchase Agreements, issued January 9, 2015, in combined Docket Nos. 14-035-117, 14-035-121 and 14-035-122 (“Order”).

In the Order, the Commission approved the electric service agreement (“ESA”) between Kennecott and Rocky Mountain Power (“RMP”) subject to four conditions that, as the Commission noted, are not and will not be memorialized in any additional agreements between the parties. Order at 3-4. The Order states that the “additional confidential terms outside the ESA [were] agreed to by PacifiCorp and Kennecott to address the concerns raised by the Office in their written comments of October 31, 2014.” *Id.* at 3. The fourth condition is stated as follows:



Id. at 4. The Order states in the next paragraph:

PacifiCorp testified it was authorized to represent that *Kennecott is in agreement with the additional terms and conditions*. PacifiCorp testified that the terms and conditions of the ESA and the additional terms and conditions *agreed to by Kennecott and PacifiCorp* discussed above are just, reasonable and in the public interest.

Id. (emphasis added). The Order observes that “PacifiCorp further testified that Kennecott and PacifiCorp ... agree to comply with the additional terms and conditions if included in a Commission order.” *Id.*

Kennecott confirms that it authorized RMP to represent that Kennecott was in agreement with the first three conditions. Kennecott, however, did not authorize RMP to represent that Kennecott agreed to the fourth or “final” condition.

Kennecott strongly disagrees with any requirement that RMP [REDACTED] in connection with the approval of any future special contract. Kennecott is not now and never has been a [REDACTED]. It receives service under a special contract because none of the standard service schedules are applicable to Kennecott’s unique circumstances and usage characteristics. No explanation or justification is required for deviating from these schedules other than the fact that all service schedules are inapplicable to Kennecott.

In reliance on RMP’s statement about the conditions to which Kennecott agreed, the Commission accepted and ordered implementation of the fourth condition, thereby creating a rule *ad hoc* which, having no application to the adjudication of Kennecott’s current special contract, purports to set future filing requirements for Kennecott’s future special contracts. A requirement that [REDACTED] is not imposed on other special contracts, not required by any currently effective statute or rule, and not the subject of any lawful rulemaking proceeding. Such a requirement interferes with the future contract negotiation process between RMP and Kennecott and prejudices the outcome of those future negotiations by [REDACTED].

The Commission may *sua sponte* clarify the Order, for example, by withdrawing the improvident rule or by explaining that the fourth condition necessarily implies that it will become applicable only if and when [REDACTED]. In any case, some clarification of the Order would appear to be necessary to avoid an unlawful rule that would interfere with the parties’ right to freely negotiate their future contracts, and would invite prejudice in a future adjudication to approve them.

Whether or not the Commission chooses to clarify its Order, Kennecott respectfully requests that the Commission accept this correspondence as part of the record in this docket to

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reflect that Kennecott did not agree, and never authorized RMP to represent to the Commission that Kennecott did agree, to the fourth condition.

Thank you for giving this matter your attention.

Very truly yours,

/s/ _____

William J. Evans

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