



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: Public Service Commission

From: Office of Consumer Services
Michele Beck, Director
Cheryl Murray, Utility Analyst

Date: February 23, 2015

Subject: 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 14-035-117.

REDACTED

1 Background

On September 8, 2014 Rocky Mountain Power Company (Company) filed with the Public Service Commission (Commission) an application for approval (Application) of an Electric Service Agreement (ESA or Contract) between PacifiCorp and Kennecott Utah Copper LLC (Kennecott).

At the conclusion of the November 20, 2014 hearing on the matter the Commission issued a bench ruling approving the ESA with certain provisions recommended by the Office of Consumer Services (Office) in its comments submitted on October 31, 2014 and reiterated at the hearing.

The bench ruling was followed on January 9, 2015 with a written Order Confirming Bench Rulings Approving Electric Service and Qualifying Facilities Power Purchase Agreements.¹

On February 6, 2015, Attorneys for Kennecott Utah Copper LLC submitted a letter (Kennecott Letter) to the Commission calling attention to 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”).”

Kennecott Objection

The misstatement in question deals with the Office’s recommendation that:

[Begin Confidential] [Redacted]
[Redacted]
[Redacted]
[Redacted] [End Confidential]

The Kennecott Letter points to two statements in the Order as problematic:

[Begin Confidential] [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [End Confidential] ²

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 agreed to by Kennecott and PacifiCorp discussed above are just, reasonable and in the public interest.³

Kennecott goes on to confirm 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.” Further Kennecott express its strong disagreement with any requirement that RMP [Begin Confidential] “ [Redacted] [End Confidential].

Kennecott suggests that the Commission may clarify the Order, however, “Whether or not the Commission chooses to clarify its Order, Kennecott respectfully requests that

¹ The Order covered Docket Nos. 14-035-117, 14-035-121 and 14-035-122.
² Kennecott Letter, page 1 and Order, page 4.
³ Kennecott Letter, page 2 and Order, page 4.
Office of Consumer Services Reply to Kennecott Letter, Docket 14-035-117. Redacted

the Commission accept this correspondence as part of the record in this docket to reflect that Kennecott did not agree, and never authorized RMP to represent to the Commission that Kennecott did agree, to the fourth condition.

Following receipt of the Kennecott Letter the Commission issued a Notice of Filing of Request for Review or Rehearing and Comment Period. Although Kennecott's Letter does not specifically request review or rehearing, based on the content the Commission allowed for interested parties to submit comments on or before February 23, 2015.

Office Response

The Office reviewed the transcript of the proceeding wherein Company witness Paul Clements described the first three Office recommendations and stated "The Company can represent that it has reviewed these terms and conditions with Kennecott and Kennecott has authorized the Company to represent that they are in agreement with *those* additional terms and conditions." [italics added]

Following the Office's testimony, which included the fourth condition, the Company's attorney asked one redirect question of his witness:

"Mr. Clements, just to clarify, is there any difference in what you laid [sic] in your summary regarding the additional conditions the Company and Kennecott have agreed to compared to what Ms. Murray laid out in her testimony?"⁴

Mr. Clements responded in part:

"The other item that she suggested regarded any future electric Service Agreements and commitments the Company would have regarding its application for those future Electric Service Agreements. The *Company* would agree to that condition, as well".⁵ [italics added]

The Office asserts that while the Order could be clarified that Mr. Clements did not represent that Kennecott agreed to the fourth recommendation; there is no need to otherwise change the Order. The Company has agreed to a condition that is placed solely on it, the Commission has issued an order, and Kennecott's objection, beyond clarifying the Order regarding agreement to the fourth recommendation, should be

⁴ Redacted transcript, page 29 lines 2 - 6.

⁵ Redacted transcript, pages 29 - 30, lines 22- 25 and 1 and 2, respectively.

dismissed. The Office notes that Kennecott was well aware of the Office's recommendations and had every opportunity to intervene and provide a response within the normal course of the docket. The Office objects to Kennecott's suggestion that the fourth recommendation now be withdrawn from the Order.

The Company would be the party to make the application for approval of any future ESA between the Company and Kennecott and it is the Company's responsibility to provide the necessary documentation to support such a filing. The Office's fourth recommendation was directed solely to the Company and the Company agreed to that recommendation. Nothing is required of Kennecott. The alleged interference "with the future contract negotiation process" is purely speculative and provides no basis to remove the provision agreed to by the Company. The Office notes that in dockets of this type the Company routinely provides, either in writing or discussion with the Office and the Division of Public Utilities (Division), similar information.

Conclusion

The Office's fourth recommendation as accepted by the Company requires nothing of Kennecott and is in no way binding on Kennecott. The information to be provided through the recommendation is information the Office and Division routinely require in special contract examinations.

The Office supports a clarification of the Order only so far as Kennecott's agreement, or lack thereof, to the fourth recommendation. No other "clarifying" language should be included and the fourth recommendation, as accepted by the Company, should not be withdrawn from the Order.

Copies To: Rocky Mountain Power
Bob Lively, Regulatory Manager
Yvonne Hogle
Division of Public Utilities
Chris Parker, Director
Artie Powell, Energy Section Manager
Kennecott
William Evans