

Gary A. Dodge, #0897
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdllaw.com

Attorneys for Kennecott Utah Copper LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of an Energy Services Contract between Rocky Mountain Power and Kennecott Utah Copper LLC	Docket No. 16-035-33 COMMENTS OF KENNECOTT UTAH COPPER LLC
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Kennecott Utah Copper LLC (“Kennecott”) respectfully asks the Commission to approve the Energy Services Agreement submitted for Commission approval by RMP as part of this Docket, deny Praxair’s request to intervene, and issue an order protecting the contract and any other confidential information from disclosure to or discovery by Praxair. Kennecott submits these comments pursuant to Commission Rule R746-100-10 F.

Background

On August 5, 2016, Rocky Mountain Power (“RMP”) filed an Application in this docket seeking approval of an Energy Services Agreement (“ESA”) that it had negotiated with Kennecott. On September 29, 2016, the Division of Public Utilities (“Division”) filed a motion

to suspend testimony filing dates in light of an agreement in principle that had been reached in this docket among the Division, RMP and the Office of Consumer Services (“Office”). On September 30, 2016, the Commission suspended testimony filing dates, while retaining the October 27, 2016 hearing date. On October 7, 2016, RMP, the Division and the Office filed a stipulation (“Settlement Stipulation”) resolving all issues in this docket and recommending Commission approval of the ESA.

On September 20, 2016, Praxair, Inc. (“Praxair”) filed a Petition to Intervene in this docket. Memoranda in opposition to Praxair’s Petition to Intervene were filed by RMP on September 27, 2016 and by the Office on October 5, 2017. Both parties point out that Praxair has failed to demonstrate any legitimate interest in this docket. RMP’s opposition also notes that an intervention by Praxair might disrupt timely resolution of this proceeding, and warns that Praxair may be seeking to gain access to the confidential RMP/Kennecott contract or other proprietary information. Kennecott is filing these comments to express its serious concerns over any potential disruption to the schedule for approval of its ESA or any potential disclosure of its commercially sensitive information.

Kennecott Comments

Prompt Approval of the ESA is Essential. Kennecott respectfully submits that under no circumstance should Praxair or Praxair’s Petition to Intervene be allowed to disrupt or interfere with the Commission’s prompt consideration and approval of the ESA. The current ESA approval schedule is critical, as Kennecott’s current electric supply arrangement with RMP expires at the end of next month.

Beginning with the Notice of Scheduling Conference issued on August 8, 2016, and the scheduling conference on August 16, 2016 (that included Praxair), Kennecott, RMP, the Office, and the Division have worked expeditiously and diligently to evaluate and discuss the ESA. As a result of this effort, the parties – RMP, the Division, and the Office – have resolved all issues, as evidenced by the ESA and the Settlement Stipulation. Moreover, the testimony filing deadlines have been suspended in light of the Settlement Stipulation. Intervention by Praxair could threaten the existing ESA approval schedule. In light of the October 27 hearing date, it is not practicable at this point to set new testimony filing deadlines to allow extraneous issues that Praxair apparently wishes to raise to be addressed in this docket, while still permitting other interested entities a reasonable opportunity to file motions challenging the relevance of those issues and/or file testimony responding to the same. The Commission should not afford Praxair's intervention to jeopardize the ESA approval schedule.

Kennecott's Proprietary Commercial Information Must Be Protected. The ESA and related information in the Docket contain conditions, terms, and information that is confidential to Kennecott. Discovery of this information by external parties and stakeholders, including but not limited to suppliers like Praxair, could impair or otherwise interfere with current and future commercial and other relationships as well as place Kennecott at a competitive disadvantage in negotiations. Disclosure of proprietary Kennecott information – including the RMP/Kennecott ESA under consideration and information relating to the same – could thus result in serious commercial harm to Kennecott. Praxair owns a facility located on Kennecott property and supplies oxygen to Kennecott from that facility. Kennecott and Praxair must, therefore,

periodically negotiate the terms of their continuing commercial relationship. Knowledge by Praxair of Kennecott's proprietary commercial information – including critical cost inputs such as electricity pricing – would give Praxair an unfair competitive advantage.

Praxair has no legitimate interest in the details of Kennecott's future contractual relationship with RMP. Kennecott suspects that Praxair's intention in seeking intervention in this docket is, among other things, to gain access to the ESA. Kennecott submits that under no circumstances should Praxair be permitted to access any of Kennecott's proprietary commercial information, including the ESA or any related electricity pricing information, through this docket. Thus, in the event the Commission determines that Praxair should be permitted to intervene in this docket for some reason, Kennecott respectfully asks the Commission to simultaneously impose additional protective measures pursuant to Commission Rule R746-100-16 a.1.f –g, to prevent Praxair or its counsel from obtaining or being given any type of access to the ESA or any other confidential or proprietary commercial information relating to Kennecott or the ESA that may be contained in the Application, exhibits, testimony, workpapers and data responses provided by or to RMP or any other party in this docket.

Praxair Has No Legitimate Interest in RMP's Contractual Relationship with Kennecott. Kennecott respectfully submits that the details of its future contractual relationship with RMP should remain confidential between RMP and Kennecott. Praxair's apparent desire to discover the specifics of this contract to influence Praxair's future commercial relationships with RMP and Kennecott is not a legitimate interest for intervention. As properly noted in the RMP and Office oppositions to Praxair's request for intervention, Praxair has not demonstrated that it

has any proper interest in the outcome of this docket nor requested any relief that can be granted in this docket. It is no more relevant in this docket that for the past several years Praxair's load was included in Kennecott's load and Praxair received power as a Kennecott tenant than that Praxair previously received electric service under its own arrangements with RMP. Moreover, the contracts that brought Praxair's load under Kennecott's contract expire in November of this year. Neither Praxair's past or future contractual arrangement with Kennecott nor Praxair's past or future contractual arrangement with RMP are in any way relevant in this docket to the question of whether RMP's new contract with Kennecott and the stipulation supporting approval of the same are reasonable and in the public interest.

Kennecott suspects that Praxair may mistakenly believe that the ESA *requires* RMP to serve Praxair after November of this year under RMP Schedule 9. Kennecott believes this mistaken impression may be based on a potentially misleading statement in RMP's opposition to Praxair's intervention. The last paragraph of page 2 of RMP's opposition contains the following statement: "As identified in the energy services agreement between RMP and Kennecott ('New Agreement'), Rocky Mountain Power will serve Praxair directly under Schedule 9." In fact, the ESA contains no such provision. Indeed, the *only* reference in the entire ESA to Praxair is contained in Section 4.05 of the ESA¹, as follows:

¹ The ESA has been designated as Confidential, but the ESA's sole reference to Praxair has been reproduced here, with the permission of Kennecott and RMP, to demonstrate that the ESA makes no attempt to dictate the terms under which RMP will provide electric service to Praxair after Kennecott's current contract ends. RMP may assume that future service to Praxair will and should be provided under Schedule 9, but the ESA does not dictate that result. This docket, which seeks approval of the ESA, is not the appropriate forum for determining whether or not Praxair has a legitimate basis for securing electric service from RMP under an arrangement other than Schedule 9. Praxair is certainly free to seek different pricing or services through negotiations with RMP or through a different docket. This is not the docket in which Praxair's

Section 4.05 **Resale of Power.**

Electric power purchased by Customer hereunder shall not be re-sold but shall be used solely by Customer, Customer's onsite contractors and its tenants located adjacent to Customer's facilities and within the Company's service territory that are involved in Customer's mining and associated activities, but excluding Praxair's Garfield plant.

Praxair's apparent assumption that the ESA dictates the nature of Praxair's future electric service arrangements with RMP is simply incorrect. Rather, the only ESA reference to Praxair is a confirmation of RMP's and Kennecott's agreement that the Praxair load will not be included in Kennecott's load or otherwise served by Kennecott. This prohibition reflects the terminal result of negotiations between Kennecott and RMP, and between Kennecott and Praxair.

If Praxair believes that it is entitled to receive electric service from RMP under arrangements other than a Schedule 9 contract, it has every right to bring its position before the Commission for resolution. It does not have the right to disrupt Kennecott's contract with RMP or this Docket requesting Commission approval of the same.

Conclusion

Kennecott appreciates the significant and diligent efforts of RMP, the Division and the Office in investigating and resolving all issues of legitimate relevance to this Commission's consideration of RMP's request for approval of its ESA with Kennecott. These Comments and the opposition memos filed by RMP and the Office demonstrate that Praxair has no legitimate interest in intervening in this docket or in interfering with Kennecott's contractual relationship with RMP. If the Commission nevertheless determines that Praxair should be permitted to intervene, Kennecott respectfully asks the Commission to (i) be specific in identifying the

future electric service arrangements with RMP can or should be addressed.

narrow issue(s) justifying Praxair's intervention, (ii) set a schedule, consistent with the current October 27, 2016 hearing date, for resolution of any such legitimate interests, (iii) confirm that Praxair's intervention will not be allowed slow down or interfere with the Commission's timely consideration of the Settlement Stipulation or approval of the ESA; and (iv) impose additional protective measures under Rule R746-100-16 a.1.f –g to ensure that third-parties with an existing or potential commercial relationship, such as Praxair, will not be given access to the ESA, the ESA pricing, or any other confidential and proprietary information contained in this Docket.

DATED this 10th day of October, 2016.

HATCH, JAMES & DODGE

/s/ _____
Gary A. Dodge
Attorneys for Kennecott Utah Copper LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 10th day of October 2016 on the following:

Public Service Commission: psc@utah.gov

Rocky Mountain Power:

R. Jeff Richards	robert.richards@pacificorp.com
Yvonne R. Hogle	yvonne.hogle@pacificorp.com
Bob Lively	bob.lively@pacificorp.com

Division of Public Utilities:

Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Charles Peterson	chpeterson@utah.gov

Office of Consumer Services:

Rex Olsen	rolsen@utah.gov
Michele Beck	mbeck@utah.gov
Bela Vastag	bvastag@utah.gov

Praxair:

Steve Mecham	sfmecham@gmail.com
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/s/ _____