

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for Approval of an Energy Service Contract between PacifiCorp and Kennecott Utah Copper, LLC

DOCKET NO. 16-035-33

ORDER

ISSUED: November 28, 2016

For the following reasons, the Public Service Commission ("PSC") approves PacifiCorp dba Rocky Mountain Power's ("PacifiCorp"), the Division of Public Utilities' ("Division") and the Office of Consumer Services' ("Office") stipulation ("Stipulation") filed on October 7, 2016. Consistent with the Stipulation, the PSC grants PacifiCorp's application ("Application") for approval of an energy services agreement ("ESA") between PacifiCorp and Kennecott Utah Copper, LLC ("Kennecott"), which PacifiCorp filed on August 5, 2016. The PSC approves the ESA on its terms except as those terms are expressly modified by the Stipulation, in which case the PSC approves the terms dictated in the Stipulation.

1. Background

Utah Code Ann. § 54-3-32 allows defined "eligible customers" to take service from third party, nonutility energy suppliers. In the event an eligible customer elects not to transfer service, it may negotiate energy supply contracts with public utilities on terms that may differ from those in the otherwise applicable published tariff schedule, subject to the PSC's approval. Utah Code Ann. § 54-3-33.

Kennecott has an existing, PSC-approved energy supply contract set to expire on November 30, 2016. (Application at 2.) Under the ESA at issue in this docket, Kennecott will remain PacifiCorp's customer for the term specified in the ESA and will not, in the near term,

seek to transfer its service to a nonutility energy supplier. Kennecott's load will continue to be included as Utah load for jurisdictional cost allocation purposes. (*See, e.g.*, P. Clements Direct Test. at 20:354-356.)

On August 18, 2016, the PSC issued a Scheduling Order and Notice of Hearing ("Scheduling Order"), setting the docket for hearing on October 27, 2016. On October 7, 2016, PacifiCorp, the Division and the Office (collectively with PacifiCorp and the Division, the "Parties") filed their Stipulation. The non-confidential version of the Stipulation is attached as an appendix to this order.

The PSC held a hearing on October 27, 2016 to consider the Stipulation at which the Parties provided testimony supporting the Stipulation. At the conclusion of the hearing, PacifiCorp requested a bench order approving the Application, which the PSC granted. This Order memorializes that ruling.

2. Parties' Positions

The Parties all joined the Stipulation and testified it is in the public interest. At hearing, PacifiCorp's witness, Steven McDougal, outlined the Stipulation's terms, testified the Parties negotiated its terms in good faith and represented that the Stipulation is in the public interest. (*See, e.g.*, Hr'g Tr. at 12:1-5.)

The Division's witness, Charles Peterson, expressed concerns about potential ratepayer risks associated with the ESA's pricing assumptions. (*See, e.g.*, Hr'g Tr. at 14:6-13.) However, Mr. Peterson testified the potential risks to ratepayers should Kennecott elect to leave PacifiCorp's system offset these concerns. (*Id.* at 14:13-19.) In addition to the retention of

Kennecott as a customer, the Division testifies the Stipulation provides other ratepayer protections. (*Id.* at 14:20-15:6.) Ultimately, "the Division recommends approval of the Stipulation and the [ESA] as just and reasonable and in the public interest." (*Id.* at 15:2-5.)

The Office also supports the Stipulation. The Office highlights ¶ 11 of the Stipulation, which contains PacifiCorp's agreement to not take a position in the Multi-State Process or any similar jurisdictional cost allocation process about whether its costs to serve Kennecott's load should be allocated to Utah beyond the ESA's termination date. (Hr'g Tr. at 17:11-25.) Cheryl Murray testified, on the Office's behalf, that the provisions in this paragraph will help mitigate the future risk of an entity attempting to assign additional costs to Utah if Kennecott opts to leave the PacifiCorp system. (*Id.*) Similarly, Ms. Murray testified that the provisions of ¶ 15, which allow parties the option of proposing alternative methods for the ratemaking treatment of the proposed Block 2 rate differential, are essential to the Office's support of the Stipulation. (*Id.* at 18:1-13.)

3. Discussion, Findings, and Conclusions

As set forth in Utah Code Ann. § 54-7-1, settlements of matters before the PSC are encouraged at any stage of a proceeding. Pursuant to this statute, the PSC may approve a stipulation or settlement provided it finds the settlement is just and reasonable in result and the evidence in the record supports that finding.

The Stipulation at issue is the product of mutual negotiation involving Parties with substantial and varying interests. Additionally, no party has presented testimony or evidence in opposition to the Stipulation. Based on our review of the Application, accompanying exhibits,

the Stipulation and testimony at hearing, we find the Stipulation is in the public interest and the results are just and reasonable.

Accordingly, consistent with our bench ruling issued at the conclusion of the October 27, 2016 hearing, we find: (1) approval of the Stipulation to be in the public interest, and (2) the evidence, contained in the record, supports our finding that the Stipulation is just and reasonable in result.

4. Order

Pursuant to our discussion, findings and conclusions:

1. The Stipulation is approved; and
2. The ESA between PacifiCorp and Kennecott is approved as modified by the Stipulation.

DATED at Salt Lake City, Utah, November 28, 2016.

/s/ Michael J. Hammer
Presiding Officer

DOCKET NO. 16-035-33

- 5 -

Approved and Confirmed November 28, 2016, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#290497

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 written 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.

CERTIFICATE OF SERVICE

I CERTIFY that on November 28, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Bob Lively (bob.lively@pacificorp.com)
Daniel E. Solander (daniel.solander@pacificorp.com)
Yvonne R. Hogle (yvonne.hogle@pacificorp.com)
Rocky Mountain Power

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Robert Moore (rmoore@utah.gov)
Assistant Utah Attorneys General

Erika Tedder (etedder@utah.gov)
Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Administrative Assistant

DOCKET NO. 16-035-33

- 7 -

APPENDIX: SETTLEMENT STIPULATION

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPROVAL OF AN ENERGY SERVICES AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND KENNECOTT UTAH COPPER, LLC	Docket No. 16-035-33
--	----------------------

SETTLEMENT STIPULATION

This Settlement Stipulation (“Stipulation”) is entered into in Docket No. 16-035-33 by and among the parties whose signatures appear on the signature pages hereof (collectively referred to herein as the “Parties” and individually as a “Party”).

1. The Parties have conducted multiple settlement discussions. No intervening party opposes this Stipulation.

2. The Parties recommend that the Public Service Commission of Utah (“Commission”) approve the Stipulation and all of its terms and conditions as more fully explained and set forth in this Stipulation. The Parties request that the Commission make findings of fact and reach conclusions of law based on the evidence filed in this docket and based upon this Stipulation, and issue an appropriate order thereon consistent with the terms herein.

3. On August 5, 2016, PacifiCorp, doing business as Rocky Mountain Power (“Company”), filed its Application (“Application”) for Approval of an Energy Services Agreement between Rocky Mountain Power and Kennecott Utah Copper, LLC (“Kennecott Contract”), and on August 15, 2016, the Company filed testimony in support of the Application.

4. On August 8, 2016, the Commission provided notice of a scheduling conference to be held in this docket on August 16, 2016.

5. On August 18, 2016, the Commission issued a Scheduling Order setting a schedule for discovery, the filing of further testimony and a hearing.

6. The Parties have engaged in extensive discovery.

7. The Parties have held a series of settlement conferences. All intervenors in the docket have been invited to participate in these settlement conferences.

8. The Parties have agreed on settlement of the issues in this matter

SETTLEMENT TERMS AND CONDITIONS

9. The Parties agree that the Commission should approve the Kennecott Contract as submitted and find, in total and considering the terms and conditions in this Stipulation, it and this Stipulation are just and reasonable and in the public interest.

10. The Company agrees to update Exhibits A and E to the Application consistent with the recommendations made by the Division of Public Utilities, as set forth in the attached Updated Exhibit A and Updated Exhibit E.

11. The Company agrees that it will not take a position on whether costs associated with serving the Kennecott load should be included in cost allocations to Utah beyond the date of the termination of the Kennecott Contract in the Multi-State Process (“MSP”) or any similar successive MSP process, including any regional or FERC process in which allocation of costs to different states or jurisdictions is addressed.

12. The Parties agree that Kennecott will not be subject to any Energy Balancing Account-related rate changes effective after December 1, 2016 and through the term of the Kennecott Contract.

13. The Parties request that the Commission enter an order authorizing the Company to track the net power costs related to the Kennecott Contract in the Energy Balancing Account (“EBA”) using a process described in Paragraph 14 below.

14. The Parties support calculating the impact of the Kennecott Contract in the EBA using a two-step process, including a proposed deadband of recovery.

a. Step 1: calculated as normal without any adjustments for the Kennecott Contract, with the exception described in Paragraph 18 below;

b. Step 2: on a monthly basis, the Company will apply the Block 2 Differential described in Paragraph 14.c. below to the Block 2 load at meter (“Block 2 True-up”).

c. The Block 2 Differential is the difference between the [REDACTED] price paid by Kennecott and the base net power cost average rate. The Company will be responsible for up to \$350,000 of the Block 2 True-up, positive or negative (the “Deadband”). The difference in excess of the Deadband will be included in a net power cost sub-account and will be recovered from or credited back to other Utah customers as part of the EBA.

15. The Parties agree that either in the next general rate case or other appropriate proceeding, Parties may propose alternative methods for the ratemaking treatment of the Block 2 True-up and the Deadband; however, if a Deadband is implemented, the Parties agree that they will take the position in any such case that the Deadband will not exceed \$500,000, on a symmetrical basis.

17. Through the term of the Kennecott Contract, forecast loads, costs and revenues, consistent with the terms of the Kennecott Contract, will be reflected in allocations and revenues in general rate cases.

18. In the event Kennecott acquires a [REDACTED] [REDACTED] to serve Block 2 load as described in Section 5.01(b)(iii) of the Kennecott Contract, the cost of said [REDACTED] [REDACTED] will be direct assigned to Kennecott and will not be included in the EBA, the Block 2 True-up or the Deadband. Actual NPC will be adjusted to remove the [REDACTED] [REDACTED] by marking it to [REDACTED] ([REDACTED]) using the actual [REDACTED] [REDACTED] price.

GENERAL TERMS AND CONDITIONS

19. Utah Code Annotated § 54-7-1 authorizes the Commission to approve a settlement as long as the settlement is just and reasonable in result. The Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

20. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Administrative Code R746-100-10.F.5, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgement by any Party of the validity or invalidity of any principle or practice of regulatory accounting or ratemaking; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

21. The Parties will pre-file written testimony supporting the Stipulation if the Commission so desires; however, in the absence of such Commission preference, the Parties do

not intend to file additional testimony in this Docket. Each Party will make one or more witnesses available to explain and offer further support for this Stipulation at the hearing scheduled in this Docket. As applied to the Division and the Office, the explanation and support shall be consistent with their statutory authority and responsibility.

22. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

23. The Parties request that the Commission consider this Stipulation at the hearing scheduled in this docket.

24. The Parties request that the testimony filed in this docket be received into evidence in support of this Stipulation.

DATED this ___ day of October, 2016.

R. Jeff Richards
Vice President and General Counsel
Yvonne R. Hogle
Assistant General Counsel
ROCKY MOUNTAIN POWER
1407 North West Temple, Suite 320
Salt Lake City, UT 84116

Chris Parker
DIVISION OF PUBLIC UTILITIES
Heber Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Michele Beck
OFFICE OF CONSUMER SERVICES
Heber Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111