

WILLIAM J. EVANS (5276)
CHAD C. BAKER (14541)
PARSONS BEHLE & LATIMER
Attorneys for Kennecott Utah Copper LLC and
Tesoro Refining and Marketing Company LLC
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Email: bevans@parsonsbehle.com
cbaker@parsonsbehle.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of PacifiCorp d/b/a Rocky Mountain Power's Request for a Declaratory Ruling regarding Allocation of Interconnection Costs under the Public Utility Regulatory Policies Act.

Docket No. 17-035-25

COMMENTS BY JOINT INDUSTRIAL PETITIONERS KENNECOTT UTAH COPPER LLC AND TESORO REFINING AND MARKETING COMPANY LLC

Joint Industrial Petitioners¹ submit the following comments in Docket No. 17-035-25 (“Docket”) and respectfully request that the Utah Public Service Commission (“Commission”) consider these comments and recognize the distinction between Joint Industrial Petitioners’ circumstances and those described by PacifiCorp d/b/a Rocky Mountain Power (“RMP” or “Company”) in its request for declaratory ruling. Joint Industrial Petitioners further request that to the extent the Commission issues a declaratory ruling, that the Commission issue the ruling in a way that recognizes the existing relationships between RMP and the Joint Industrial Petitioners

¹ As provided in the Joint Petition to Intervene filed on 1 June 2017 by Kennecott Utah Copper LLC (“Kennecott”) and Tesoro Refining and Marketing Company LLC (“Tesoro”) Kennecott and Tesoro are referred to, for convenience only, as Joint Industrial Petitioners.

that are largely influenced by Joint Industrial Petitioners' retail electricity consumption and does not interfere or otherwise impact their interconnection or periodic qualified facility (QF)² sales associated with their QF ownership and operation. Joint Industrial Petitioners submit these comments in accordance with the Commission's Notice of Filing and Comment Period Issued 2 May 2017 in this Docket.³

I. Background

Joint Industrial Petitioners have had long retail relationships with RMP. These relationships have revolved around retail electric purchases by Joint Industrial Petitioners from RMP. These purchases include demand charges, customer charges, and/or other charges designed to recover, among other things, the costs associated with the use of the transmission and distribution system as necessary to provide retail service to the Joint Industrial Petitioners. These relationships have also included the Joint Industrial Petitioner's ownership and operation of QFs that are integrated into their operations, and the periodic sale of QF net output to RMP. In general, the amount of power that the Joint Industrial Petitioners purchase from RMP approximates or exceeds their likely output from their QFs.

Tesoro owns and operates a petroleum refining facility near Salt Lake City. Tesoro and RMP's retail electric service relationship spans many decades. Since at least 2004, Tesoro has

² Qualified Facility means a qualifying cogeneration facility or qualifying small power production facility within the meaning of Sections 201 and 210 of the public Utility Regulatory Policies Act of 1978 ("PURPA"). See 16 U.S.C. §§ 796 and 824a-3.

³ *In the Matter of PacifiCorp d/b/a Rocky Mountain Power's Request for a Declaratory Ruling regarding Allocation of Interconnection Costs under the Public Utility Regulatory Policies Act*, Docket 17-035-25, Notice of Filing and Comment Period (May 2, 2017).

owned, operated, and consumed electricity from a QF integrated into its industrial operations. The current QF operates as a natural gas cogeneration facility with an estimated average annual energy delivery to RMP of 10,000 megawatt-hours.⁴ Under a QF power purchase agreement (“PPA”) between Tesoro and RMP, Tesoro has the option but not the obligation to sell the QF net output to RMP.⁵ The Commission has found that Tesoro’s QF has met all interconnection requirements and is “fully integrated with [RMP’s] system.”⁶ Under a confidential agreement previously approved by the Commission, RMP supplies electricity for any portion of Tesoro’s load not served by its QFs.⁷ RMP also purchases, at times, energy from Tesoro’s QFs in accordance with the QF PPA.

Kennecott owns and operates mining and mineral processing facilities near Salt Lake City. Kennecott and RMP also have had a retail electric service relationship for decades. In addition, since at least 2004, Kennecott has owned, operated, and consumed electricity from QFs integrated into its industrial operations. Kennecott’s QFs include a waste-heat-fired steam cogeneration facility with an expected average monthly output of approximately 18.5 megawatts (MW) associated with Kennecott’s smelter, and a waste-heat-fired cogeneration facility with an expected average output of about 5.4 MW associated with Kennecott’s refinery.⁸ Under the QF

⁴ *In the Matter of the Application of Rocky Mountain Power for Approval of the power Purchase Agreement Between Tesoro Refining and Marketing Company LLC*, Docket No. 16-035-40, Order at 3 (Nov. 18, 2016). (“Tesoro QF Order”).

⁵ *Id.*

⁶ *Id.*

⁷ *In the Matter of the Application for Rocky Mountain Power for Approval of Partial Requirement Master Electric Service Agreement between PacifiCorp and Tesoro Refining and Marketing Company*, Docket No. 14-035-107, Order (Sept. 25, 2014).

⁸ *See In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between Rocky Mountain Power and Kennecott Utah Copper LLC (Smelter)*, Docket 16-035-38; *In the Matter of the Application of Rocky Mountain Power of the Power Purchase Agreement between Rocky Mountain Power and Kennecott Utah Copper LLC (Refinery)*, Docket No. 16-035-39, Order at 3 (Nov. 17, 2016) (Kennecott QF Order).

PPAs between Kennecott and RMP, Kennecott has the option but not the obligation to sell its net output to RMP.⁹ The Commission has found that Kennecott’s QFs have met all interconnection requirements and are “fully integrated into [RMP’s] system.”¹⁰ Under a confidential agreement previously approved by the Commission, RMP supplies load not served by Kennecott’s self-generation, and occasionally purchases energy from Kennecott’s QFs.¹¹

RMP, concerned about the impact of *new* QF generators seeking to put power to RMP in constrained transmission areas, filed a request for a declaratory ruling.¹² In this Docket, RMP has requested that the Commission review certain statutes, order, and rules relating to the Commission’s implementation of PURPA, and clarify the applicability of these laws, orders and regulations to “QF interconnection to the transmission system.”¹³ RMP further requested that the Commission define the scope of interconnection required for QF generators and allocate to the QF any associated costs.¹⁴ The RMP Request, however, if read broadly, could impact Joint Industrial Petitioners’ long-standing interconnections and service relationships with RMP. Joint Industrial Petitioners do not intend to comment on all of the issues and circumstances raised by RMP’s

⁹ *Id.* at 3-4.

¹⁰ *Id.*

¹¹ *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 (Nov. 28, 2016).

¹² *See In the Matter of PacifiCorp d/b/a Rocky Mountain Power’s Request for a Declaratory Ruling regarding Allocation of Interconnection Costs under the Public Utility Regulatory Policies Act*, Docket 17-035-25, Rocky Mountain Power’s Request for Declaratory Ruling at 5 (May 1, 2017) (“RMP Request”).

¹³ *Id.* at 3.

¹⁴ *Id.* at 4 (“[RMP] requests a declaratory ruling clarifying that these statutes, order, and rules require a QF of any size seeking to sell its full net output to [RMP] on a firm basis and seeking interconnection to the transmission system is financially responsible for all of the interconnection costs necessary to effectuate that sale[.]”)

Request.¹⁵ Instead, Joint Industrial Petitioners file these comments solely to preserve their interconnection and electric service relationships with RMP relating to their ownership, operation, and consumption of QF generation associated with their respective industrial loads.

II. Joint Industrial Petitioners' retail customer relationship and their ownership, operation, and consumption of QF energy associated with their respective industrial operations differs from the QF developer or supplier scenario described in the RMP Request.

Joint Industrial Petitioners each enjoy a longstanding and unique relationship with RMP that is principally driven by Joint Industrial Petitioners' purchase and consumption of retail electricity from RMP. These relationships distinguish Joint Industrial Petitioners from the circumstances described by RMP in its request for declaratory relief.

RMP claims its seeks declaratory relief to address circumstances that are arising from the siting of new generation facilities (some that may qualify as QFs under PURPA) in transmissions constrained areas.¹⁶ The RMP Request highlights a 27 July 2016 large generator interconnection system impact study relating to a 240 MW generator proposing to interconnect to RMP's Sigurd-Glen Canyon 230 kV transmission line in Kane County, Utah.¹⁷ According to RMP, this study identified a considerable difference in costs and construction schedules between energy resource (ER) and network resource (NR) interconnections in part due to the purported fully subscribed

¹⁵ RMP's Request raises a number of issues including, but not limited to, (1) the type of interconnection required for FERC-Jurisdictional Transmission Service; (2) the type of interconnection required for State-Jurisdictional Interconnection Service; (3) whether FERC or the Commission has jurisdiction over a QF interconnection; and (4) cost allocation for firm QF purchase arrangements. *See generally Id.* The Joint Industrial Petitioners' decision to not comment on the various matters raised by RMP's Request should not be taken as an agreement or disagreement with RMP on any of these topics.

¹⁶ *Id* at 2.

¹⁷ RMP Request at 9.

Sigurd-Glen Canyon pathway that would be used to connect the new generation to load.¹⁸ While not entirely clear from the RMP Request, it appears that RMP assumes that the primary purpose of the new QFs described in the RMP Request would be to sell power to RMP.

Joint Industrial Petitioners, conversely, are predominately retail customers. Their QF production, which is primarily to facilitate their industrial processes, also offsets their retail demand. But, the Joint Industrial Petitioners' historic retail demand exceeds the likely output from their QFs. As such, the Joint Industrial Petitioners' purchase of retail electric supply from RMP, not the sale of QF power to RMP, dominates the relationships between RMP and Joint Industrial Petitioners. The United States Federal Energy Regulatory Commission has recognized that retail relationships can dominate QF interconnection issues:

A qualifying facility which is already interconnected with an electric utility for purposes of sales may seek to establish interconnection for the purpose of utility purchases from the qualifying facility. *In this case, the qualifying facility may have compensated the utility for its interconnection costs with respect to the sales to the qualifying facility, either as part of the utility's demand or energy charges, or through a separate customer charge.* If this is the case, the interconnection costs associated with the purchase include only those additional interconnection expenses incurred by the electric utility as a result of the purchase, and do not include any portion of the interconnection costs for which the qualifying facility has already paid through its retail rates.¹⁹

As existing retail customers of RMP, and because the Joint Industrial Petitioners' QFs have met all interconnection requirements and are fully integrated with RMP's system, the Joint

¹⁸ *Id.* at 7-11.

¹⁹ Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978. 45 Fed. Reg. 12214, 12217 (Feb. 25, 1980) (codified at 18 C.F.R. pt. 292) (emphasis added).

Industrial Petitioners do not impose new impacts on transmission pathways. Unlike new QF generators, who exist primarily to put energy to RMP and who impose new demands on the RMP system, the Joint Industrial Petitioners predominately consume the net output from their QFs and impose no significant impacts to the RMP system outside the retail electric supply. Although Joint Industrial Petitioners, at times, may generate more electricity than they consume, or may inadvertently flow electricity from their QFs to RMP, in almost every case the net output from the QF is close to or significantly less than the load served by RMP under the respective electric service agreements. Moreover, any net output exported to RMP is proximate to additional retail demand from industrial, commercial, and residential customers within the greater Salt Lake area. Joint Industrial Petitioners, therefore, are different from the new generation development remote from end users as described in the RMP Request. Any interconnection impacts and issues associated with the Joint Industrial Petitioners' retail and QF relationships have already been addressed or are capable of being addressed through their existing relationships.

To the extent Joint Industrial Petitioners circumstances should change, the current agreements and relationships between RMP and each Joint Industrial Petitioner can also be used to (or provide a process to) address any alleged impact to the existing relationship and interconnection resulting from such changes. In other words, the long-standing relationships between RMP and the Joint Industrial Petitioners eliminate the uncertainty expressed by RMP that may arise from new generation being developed in constrained transmission pathways. As such, Joint Industrial Petitioners' QFs should be excluded from among the QFs that may be subject to the declaratory relief sought by RMP.

III. Conclusion

Joint Industrial Petitioners own, operate, and consume energy from QFs as part of their industrial operations and as part of their retail energy service from RMP. The likely QF output is either close to or well below the historic retail loads that are integrated into RMP's system. Joint Industrial Petitioners respectfully request that the Commission recognize these circumstances and the existing interconnection and contractual relationships between RMP and Joint Industrial Petitioners. To the extent the Commission grants RMP's request for declaratory relief, Joint Industrial Petitioners request that the Commission recognize and preserve the existing unique relationships, agreements, and processes for Joint Industrial Petitioners QFs, and exclude from the applicability of any declaratory ruling those QF facilities that are owned and operated by industrial customers as part of their industrial operations.

DATED this 1st day of June, 2017.

/s/ Chad Baker

WILLIAM J. EVANS

CHAD C. BAKER

PARSONS BEHLE & LATIMER

Attorneys for Joint Industrial Petitioners

CERTIFICATE OF SERVICE

Docket No. 17-035-025

I hereby certify that on this 1st day of June 2017, I caused to be sent via email, a true and correct copy of the foregoing **COMMENTS BY JOINT PETITIONERS KENNECOTT UTAH COPPER LLC AND TESORO REFINING AND MARKETING COMPANY LLC** to:

Patricia Schmid
Justin Jetter
Robert Moore
ASSISTANT ATTORNEYS GENERAL
500 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
pschmid@utah.gov
jjetter@utah.gov
rmoore@utah.gov

Michele Beck
OFFICE OF CONSUMER SERVICES
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111
mbeck@utah.gov

Chris Parker
DIVISION OF PUBLIC UTILITIES
500 Heber Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111
chrisparker@utah.gov

R. Jeff Richards
Yvonne R. Hogle
Bob Lively
ROCKY MOUNTAIN POWER
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
robert.richards@pacificcorp.com
yvonne.hogle@pacificcorp.com
bob.lively@pacificcorp.com

Sarah K. Link
Karen J. Kruse
PacifiCorp d/b/a Pacific Power
825 NE Multnomah St., Suite 2000
Portland, Oregon 97232
Sarah.Kamman@pacificcorp.com
Karen.Kruse@pacificcorp.com

Paul Shakespear
Elizabeth M. Brereton
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101
Telephone: 801-257-1541
Facsimile: 801-257-1800
pshakespear@swlaw.com
lbrereton@swlaw.com

Christine Mikell
Enyo Renewable Energy, L.L.C.
3434 E. Bengal Blvd. #180
Salt Lake City, Utah, 84121
Telephone: 801-455-1045
christine@enyo-energy.com

/s/ Joy Prout
