

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Rocky Mountain Power for Approval of an Amendment to the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Smelter	<u>DOCKET NO. 21-035-61</u>
Application of Rocky Mountain Power for Approval of an Amendment to the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Refinery	<u>DOCKET NO. 21-035-62</u> <u>ORDER APPROVING AMENDMENTS TO</u> <u>QUALIFYING FACILITY POWER</u> <u>PURCHASE AGREEMENTS</u>

ISSUED: December 28, 2021

PROCEDURAL HISTORY

On November 9, 2021, Rocky Mountain Power (RMP) filed two applications (“Applications”) with the Public Service Commission (PSC), requesting the PSC approve second amendments (“Amendments”) to two separate power purchase agreements (PPAs) between PacifiCorp and Kennecott Utah Copper LLC (Kennecott). The PSC first approved the PPAs in a consolidated order issued December 20, 2019 in Docket Nos. 19-035-36 and 19-035-37¹. RMP and Kennecott later agreed to First Amendments to the PPAs that the PSC approved in a consolidated order issued December 18, 2020 in Docket Nos. 20-035-43 and 20-035-44.²

¹ *Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Smelter*, Docket No. 19-035-36 and *Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Refinery*, Docket No. 19-035-37, Order Approving Qualifying Facility Power Purchase Agreements issued Dec. 20, 2019.

² *Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Smelter*, Docket No. 20-035-43 and *Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Refinery*, Docket No. 20-035-44, Order Approving Amendments to Qualifying Facility Power Purchase Agreements issued Dec. 18, 2020.

This Order refers to the PPAs as amended by the Amendments as the “Amended PPAs.” The PSC held a Scheduling Conference on November 10, 2021, and subsequently issued a Scheduling Order and Notice of Virtual Hearing on November 18, 2021. The Division of Public Utilities (DPU) filed comments on December 8, 2021. RMP and DPU testified at the Virtual Hearing on December 13, 2021.

THE APPLICATION

RMP’s Applications describe the terms and conditions of the Amendments. RMP asserts that it is obligated to purchase power from Kennecott as a qualifying power producer under the Public Utility Regulatory Policies Act of 1978 (PURPA) and Utah Code Ann. § 54-12-1, that it calculated the power purchase prices set forth in the Amendments consistent with the PSC-approved methodology, and that the costs of the Amended PPAs will be allocated in accordance with the 2020 Protocol.³ RMP describes Kennecott’s power production facilities as waste heat fired cogeneration facilities with capacity ratings of 7.54 MW (Refinery) and 31.8 MW (Smelter). RMP also states that Kennecott’s facilities are fully integrated with RMP’s power system and have met all interconnection requirements. Finally, the Applications provide that the Amended PPAs contain a “lesser of” provision under which RMP agrees to purchase generated power for the lesser of the amount calculated under the PSC-approved methodology or the rate for market blocks of power under the Energy Services Agreement approved by the PSC in Docket No. 16-035-33.⁴

³ See *Application of Rocky Mountain Power for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42, Order Approving 2020 Protocol issued April 15, 2020.

⁴ *Application of Rocky Mountain Power for Approval of an Energy Service Contract between*

Under the Amended PPAs, RMP and Kennecott agree to extend the conditions of the agreements for an additional 12-month period from January 1, 2022 to December 31, 2022 and to update power pricing and line loss factors. The Amendments also provide that all other terms and conditions of the PPAs previous to the Amendments remain in full force and effect.

PARTIES' COMMENTS

The Division of Public Utilities (DPU) filed comments on December 8, 2021, recommending the PSC approve the Amendments. On December 13, 2021, the PSC held a hearing on the Applications. RMP and DPU testified in support of the PSC's approval of the Amendments.

DPU represents that RMP has complied with PSC orders regarding the methodology used to determine contract pricing under Schedule 38 and associated adjustments for avoided line losses. DPU also comments that Kennecott estimates that the average net output for the Smelter and the Refinery will be less than each facility's nameplate capacity due to scheduled maintenance, and that DPU understands that, under the Amended PPAs, any sales to RMP are construed to first come from the Smelter and then from the Refinery.

At hearing, DPU testified that the Amendments are just, reasonable, and in the public interest, and reiterated its recommendation that the PSC approve the Amendments. In making its recommendation, DPU commented that the Amendments are similar to agreements from prior years and to amendments to the PPAs approved last year, and that the Amendments comply with PSC guidelines established in prior orders.

DISCUSSION, FINDINGS, AND CONCLUSIONS

Based upon our review of the Applications, the Amendments, the Amended PPAs, the testimony provided at hearing, and DPU's comments and recommendations, we find that the prices, terms, and conditions of the Amended PPAs are consistent with applicable law, PSC orders, and Schedule 38, and conclude that approval of the Applications and the Amendments is just, reasonable, and in the public interest.

In accordance with PURPA, Utah law, prior PSC orders, and RMP's tariff, the PSC reviews PPAs and associated amendments to ensure RMP has properly administered its tariff and, in particular, that it has appropriately determined avoided cost pricing based on the PSC-approved methodology. Based on the PSC's review of the Amendments and on DPU's comments, the PSC finds that RMP has done so here. In addition, no party opposed the Applications or otherwise provided evidence challenging the Amended PPAs' rates, terms, or conditions.

ORDER

The Applications, underlying Amendments, and resulting Amended PPAs are approved.

DATED at Salt Lake City, Utah, December 28, 2021.

/s/ Michael J. Hammer
Presiding Officer

DOCKET NOS. 21-035-61 and 21-035-62

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Approved and Confirmed December 28, 2021, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#321670

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 order by filing a request for review or rehearing with the PSC 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 PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC'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 December 28, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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