

- 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. 23-035-45</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. 23-035-46</u> <u>ORDER APPROVING AMENDMENTS TO QUALIFYING FACILITY POWER PURCHASE AGREEMENTS</u>

ISSUED: December 13, 2023

PROCEDURAL HISTORY

On September 27, 2023, Rocky Mountain Power (RMP) filed two applications (collectively, the “Applications”) with the Public Service Commission (PSC), requesting the PSC approve amendments (collectively, the “Amendments”) to two separate power purchase agreements (collectively, the “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 19-035-37.¹ The Amendments for which RMP seeks approval here represent the fourth amendments to

¹ See, e.g., *Application of RMP for Approval of the PPA between PacifiCorp and Kennecott – Smelter*, Docket No. 19-035-36 (Order Approving Qualifying Facility PPAs issued Dec. 20, 2019).

the PPAs. The PSC approved three previous amendments in orders issued December 18, 2020, December 28, 2021, and December 15, 2022, respectively.²

The PSC held a virtual consolidated scheduling conference on October 5, 2023, and subsequently issued a Scheduling Order and Notice of Virtual Hearing on October 12, 2023. The Division of Public Utilities (DPU) filed separate comments in both consolidated dockets on November 9, 2023. No other party filed comments in either docket.

The PSC held a virtual hearing on November 30, 2023, at which DPU and RMP appeared and testified.

THE APPLICATIONS

The Applications broadly describe the terms and conditions of the Amendments to the PPAs. RMP represents Kennecott's participating power production facilities are waste heat-fired cogeneration facilities with capacity ratings of 7.54 MW (Refinery) and 31.8 MW (Smelter). RMP further represents that Kennecott's facilities are fully integrated with RMP's power system and have met all interconnection requirements. Additionally, RMP emphasizes the PPAs, as amended, contain a "lesser of" provision under which RMP agrees to purchase power for the lesser of the amount calculated

² See, e.g., *Application of RMP for Approval of the PPA between PacifiCorp and Kennecott – Smelter*, Docket No. 20-035-43 (Order Approving Amendments to Qualifying Facility PPAs issued Dec. 18, 2020); *Application of RMP for Approval of the PPA between PacifiCorp and Kennecott – Smelter*, Docket No. 21-035-61 (Order Approving Amendments to Qualifying Facility PPAs issued Dec. 28, 2021); *Application of Rocky Mountain Power for Approval of an Amendment to the Power Purchase Agreement between PacifiCorp and Kennecott Utah Copper LLC – Smelter*, Docket No. 22-035-51 (Order Approving Amendments to Qualifying Facility PPAs issued Dec. 15, 2022).

under the PSC-approved methodology or the rate for market blocks of power under RMP's pre-existing Energy Services Agreement (ESA) with Kennecott.³

Through the Amendments, RMP and Kennecott agree to extend the conditions of the agreements for an additional 12-month period, from January 1, 2024 to December 31, 2024, and to update power pricing and line loss factors. All other prior terms and conditions of the PPAs remain in full force and effect.

Additionally, RMP represents (1) the Public Utility Regulatory Policies Act of 1978 (PURPA) and Utah Code Ann. § 54-12-1 obligate RMP to purchase the subject power from Kennecott, (2) RMP calculated the prices set forth in the Amendments consistent with the PSC-approved methodology, and (3) the costs associated with the amended PPAs will be allocated in accordance with the 2020 Protocol.⁴

PARTIES' COMMENTS

In its written comments, DPU represents RMP has complied with applicable PSC orders regarding the methodology used to determine contract pricing under Schedule 38 and associated adjustments for avoided line losses. At hearing, DPU's testimony affirmed these representations and asserted the Amendments are similar to agreements from prior years and to amendments the PSC approved for these PPAs last year. DPU further testified the Amendments are just, reasonable, and in the public

³ See *In the Matter of the Application of RMP for Approval of an ESA between RMP and Kennecott*, Docket No. 16-035-33 (Order issued Sept. 26, 2018).

⁴ See *Application of RMP for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42 (Order Approving 2020 Protocol, issued Apr. 15, 2020).

interest, and DPU reiterated its recommendation that the PSC approve the Amendments. DPU also recommended RMP continue to provide reports, on a quarterly basis, of hourly power purchased so that it can continue to monitor the contracts.

RMP similarly testified at hearing that the Amendments are consistent with applicable law and the PSC's prior orders and are just, reasonable, and in the public interest.

DISCUSSION, FINDINGS, AND CONCLUSIONS

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.

No party has opposed the Applications and the record contains no evidence rebutting RMP's and DPU's testimony that the rates, terms, and conditions of the amended PPAs are consistent with applicable law, including the PSC's prior orders.

Having reviewed the Applications, amended PPAs, DPU's comments, and the testimony provided at hearing, we conclude the prices, terms, and conditions of the PPAs with the proposed Amendments are consistent with applicable law, our prior orders, and Schedule 38. Additionally, we find and conclude approval of the amended PPAs to be just, reasonable, and in the public interest.

ORDER

Based on the foregoing findings and conclusions, the Applications and underlying amended PPAs are approved.

DATED at Salt Lake City, Utah, December 13, 2023.

/s/ Michael J. Hammer
Presiding Officer

Approved and Confirmed December 13, 2023, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#331247

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 13, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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