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February 14, 2024

***VIA ELECTRONIC FILING***

Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Administrator

**RE: Docket No. 23-035-51**  
**In the Matter of the Application of Kennecott Utah Copper, LLC for an Order**  
**Determining the Rates, Terms, and Conditions of Electric Service by Rocky**  
**Mountain Power to Kennecott**  
*Rocky Mountain Power's Direct Testimony*

In accordance with the Scheduling Order and Notice of Hearing issued by the Public Service Commission of Utah on November 24, 2023, Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or the "Company"), submits the confidential Direct Testimony of Craig M. Eller in the above referenced matter.

Confidential information has been uploaded to the Commission's SFTP site and separately provided to parties in this matter who have filed an Appendix A. Confidential information is provided subject to Public Service Commission of Utah Rule 746-1-602 and 746-1-603.

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

A handwritten signature in blue ink that reads "Joelle Steward". The signature is fluid and cursive.

Joelle Steward  
Senior Vice President, Regulation and Customer/Community Solutions

1                                   **I. INTRODUCTION OF WITNESS AND QUALIFICATIONS**

2   **Q. Please state your name, business address, and present position with PacifiCorp,**  
3   **d/b/a Rocky Mountain Power (“RMP” or the “Company”).**

4   A. My name is Craig M. Eller. My business address is 1407 West North Temple Street,  
5   Suite 310, Salt Lake City, Utah 84116. My present position is Vice President, Business  
6   Policy and Development for Rocky Mountain Power.

7   **Q. How long have you been in your present position?**

8   A. I have been in my present position since July 2020.

9   **Q. Please describe your education and business experience.**

10   A. I have a Bachelor of Science in Mechanical Engineering from the University of Ne-  
11   braska. In my current role, I am responsible for strategic planning, stakeholder engage-  
12   ment, regulatory support, and development and execution of major transmission pro-  
13   jects. Prior to my current role, I worked at Northern Natural Gas Company, an affiliate  
14   of the Company, from 2007 through 2020 in various business development, commer-  
15   cial marketing and engineering roles.

16   **Q. Have you testified in previous regulatory proceedings?**

17   A. Yes. I have previously filed testimony on behalf of the Company in regulatory proceed-  
18   ings in Utah, Wyoming and Idaho.

19                                   **PURPOSE OF TESTIMONY**

20   **Q. What is the purpose of your testimony?**

21   A. The purpose of my testimony is to address the arguments and proposals presented in  
22   Kennecott Utah Copper, LLC’s (“Kennecott”) November 13, 2023, application (“Ap-  
23   plication”) and December 1, 2023, direct testimony of Stephan Sands, and present the

24 Company’s proposal for serving Kennecott’s load requirements beginning January 1,  
25 2026. I discuss the relevant background information that informs the Company’s posi-  
26 tions, and explain why the Commission should not approve Kennecott’s requested  
27 rates, terms, and conditions for electric service, including their request to take service  
28 under the Company’s Electric Service Schedule No. 31 – Partial Requirements Service  
29 Large General Service 100kW and Over (“Schedule 31”). Finally, I present the Com-  
30 pany’s proposal that lays out a path for Kennecott to return to tariff rates in a manner  
31 that meets Kennecott’s request while protecting the interest of the Company’s other  
32 Utah customers.

## 33 II. EXISTING CONTRACTS

34 **Q. Please describe Kennecott’s current agreements with the Company regarding its**  
35 **electric service?**

36 A. Kennecott and the Company are parties to two agreements pertaining to Kennecott’s  
37 electric service. The first is an Energy Services Agreement (“ESA”), which took effect  
38 July 28, 2016, and terminates December 31, 2025.<sup>1</sup> The ESA details the rates, terms,  
39 and conditions for Kennecott’s electric service. The second is a Non-Generation and  
40 Renewable Energy Credit Supply Agreement (“Non-Gen/REC Agreement”), which  
41 took effect April 1, 2019, and terminates December 31, 2025.<sup>2</sup> In the Non-Gen/REC  
42 Agreement, Kennecott agreed to cease generation at its Unit 4 onsite generation plant  
43 in exchange for the ability to purchase the Company’s system renewable energy credits  
44 (“RECs”). Kennecott previously provided the existing ESA Agreement with Mr. Sands’

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<sup>1</sup> *In re Rocky Mountain Power’s Energy Service Contract with Kennecott Utah Copper, LLC*, Docket No. 16-035-33.

<sup>2</sup> *In re Rocky Mountain Power’s Non-Generation and Renewable Energy Credit Supply Agreement between PacifiCorp and Kennecott Utah Copper LLC*, Docket No. 19-035-20.

45 direct testimony as Confidential Exhibit 1.1. For ease of reference, the Non-Gen/REC  
46 Agreement is provided with my testimony as Confidential Exhibit RMP\_\_(CME-1).

47 **III.BACKGROUND AND SUMMARY OF CURRENT ESA**

48 **Q. Please briefly describe Kennecott’s electric load and generating assets.**

49 A. Kennecott is a large industrial customer with an average gross load of [REDACTED] megawatts  
50 (“MW”). Kennecott owns and operates onsite generation as described by Mr. Sands  
51 and below.

52 **Q. Prior to the current ESA, what type of contracts were typically used between**  
53 **Kennecott and the Company?**

54 A. Prior to the current ESA, Kennecott typically received service under special retail elec-  
55 tric service agreements approved by the Commission. Generally, the contracts included  
56 rates for service when Kennecott relied entirely on the Company for services and rates  
57 for service when Kennecott offset a portion of its load with self-generation. These spe-  
58 cial contracts were negotiated on a case-by-case basis, considering conditions present  
59 at the time of the negotiation and subject to Commission approval.

60 **Q. Why was Kennecott previously served under special contracts instead of regular**  
61 **tariff rates?**

62 A. At the time, Kennecott was a unique customer because it owned and operated 214.34  
63 MW nameplate of generation behind its meter, 175 MW of which was not tied to busi-  
64 ness operations and could be dispatched solely on economics. Over the years, the par-  
65 ties negotiated and executed various special contracts to establish terms and conditions  
66 that optimized the economic value of the generating assets to the mutual benefit of  
67 Kennecott and the Company’s other customers.

68 **Q. What change occurred around the time the Company and Kennecott negotiated**  
69 **the current ESA?**

70 A. In the 2014 Utah Legislative Session, new legislation provided Kennecott with options  
71 to receive energy supply from a non-utility supplier.

72 **Q. What options does Kennecott have with respect to receiving energy supply?**

73 A. Pursuant to Utah Code Ann. § 54-3-32, Kennecott has the ability to take service from  
74 a non-utility energy supplier. Under Utah Code Ann. §§ 54-2-1(7)(b) and 54-2-1(19)(a),  
75 certain entities are exempted from the definition of “electrical corporation” and “public  
76 utility”, respectively, if they provide electric service to an “eligible customer.” This  
77 allows: 1) a third party to build, own, finance, or operate a generation facility and pro-  
78 vide the energy directly to the eligible customer, or 2) allow a wholesale supplier (de-  
79 fined in Utah Code Ann. § 54-2-1(17) as a “non-utility energy supplier”) to provide  
80 power to the eligible customer from the wholesale market or other generation resources.  
81 Kennecott meets the definition of an eligible customer and therefore can take service  
82 from a non-utility energy supplier.

83 **Q. What is the process for Kennecott to take service from a non-utility energy sup-**  
84 **plier?**

85 A. The following process must be followed for Kennecott to initiate a transfer of service  
86 from the Company to a non-utility energy supplier:

87 1. Provide a minimum of 18 months’ notice to the utility of the intended date of trans-  
88 fer of service to a new provider to allow for adequate planning by the utility of loss  
89 of the load, and concurrently request transmission service under the PacifiCorp

90 OATT. Kennecott must apply with PacifiCorp transmission no later than 240 days  
91 before the intended date of transfer of service.

92 2. No sooner than 12 months but no later than 8 months before the later of the original  
93 intended date of transfer or the updated intended date of transfer, the Utah Division  
94 of Public Utilities (“DPU”) is required to file a petition with the Commission re-  
95 questing a proceeding to determine any cost impacts associated with Kennecott’s  
96 departure.

97 3. If Kennecott goes to a non-utility energy supplier, it has the right to return to the  
98 Company’s retail service after providing a 3-year notification of its intent to return.

99 **Q. Did Kennecott initiate the process to take service from a non-utility energy sup-**  
100 **plier?**

101 A. Yes. Kennecott provided notice to the Company that included an intended date of trans-  
102 fer of June 15, 2017. Kennecott proceeded with arrangements for non-utility electric  
103 supply and its own transmission service agreement. At the time, the parties continued  
104 negotiating terms and conditions under which Kennecott would remain a customer of  
105 the Company and withdraw or delay its intended date of transfer. The parties reached  
106 agreement and executed the current ESA with a term of nine years.

107 **Q. Please summarize the terms of the current ESA?**

108 A. Under the ESA, Kennecott continues to receive electric service from Rocky Mountain  
109 Power under special contract provisions with the understanding that Kennecott would  
110 transfer at the end of the Contract term. The pricing structure in the ESA includes the  
111 following provisions:

REDACTED

- 112 1. Block 1 Energy: The first [REDACTED] MW served by the Company at a rate of [REDACTED]  
113 per megawatt-hour (“MWh”) with escalation tied to a specific consumer price  
114 index,<sup>3</sup> [REDACTED]
- 115 2. Block 2 Energy: The load served by the Company exceeding [REDACTED] MW is priced  
116 at [REDACTED] [REDACTED] [REDACTED]  
117 [REDACTED]  
118 [REDACTED] The Block 2 rate is fixed, with the exception of updates  
119 for changes to the OATT rates, however Kennecott has the option to request the  
120 Company seek and provide fixed-price forward purchases for physical delivery  
121 to reduce the amount of Block 2 MWh subject to the index price.

122 Under the ESA, Kennecott also agreed to cease operation of its self-generation Units  
123 1-3.

124 **IV. WAIVER OF SERVICE OBLIGATIONS AND KENNECOTT’S RIGHTS TO**  
125 **SERVICE**

126 **Q. What are the Company’s obligations to provide service to Kennecott at the end of**  
127 **the nine-year ESA contract term?**

128 A. Article III of the ESA set forth certain understandings of the parties. Section 3.02 pro-  
129 vides that the Company has [REDACTED]  
130 [REDACTED] from the Company at the end of  
131 contract term. The contract further prevents the Company from making any claims that

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<sup>3</sup> [REDACTED]

<sup>4</sup> [REDACTED]

REDACTED

132 it has the duty to provide services, or any expectation of revenue beyond the contract  
133 term.

134 **Q. Was Section 3.02 of the ESA reviewed and approved by the Commission?**

135 A. Yes. The Commission reviewed and approved the new ESA in Docket No. 16-035-33.

136 **Q. When the ESA was filed with the Commission, how did the parties understand the  
137 Company's obligations to serve Kennecott beyond the contract term?**

138 A. During the approval process for Docket No. 16-035-33, in direct testimony Company  
139 witness Paul Clements described the Company's understanding of the Company's ob-  
140 ligation to serve as follows:

141 [REDACTED]  
142 [REDACTED]  
143 [REDACTED]  
144 [REDACTED]  
145 [REDACTED]  
146 [REDACTED]  
147 [REDACTED]  
148 [REDACTED]  
149 [REDACTED]  
150 [REDACTED]<sup>5</sup>

151  
152 **Q. Did any party submit testimony disagreeing with these statements?**

153 A. No.

154 **Q. Since approval of the ESA, has the Company included Kennecott's load in its load  
155 forecasts beyond the contract term?**

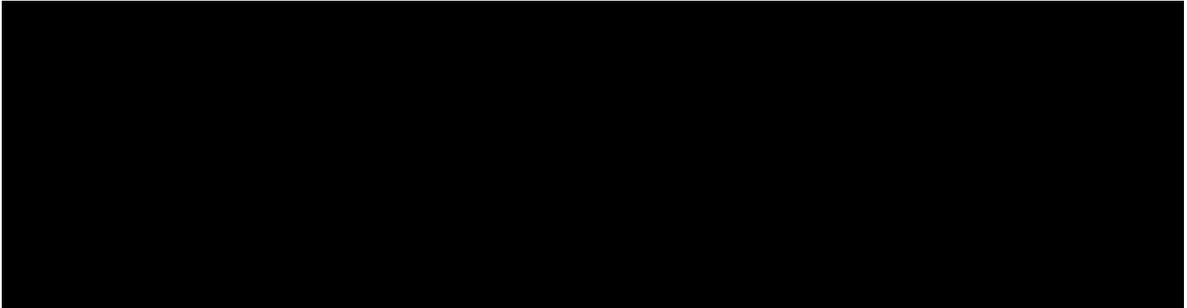
156 A. No. Consistent with the contract provisions regarding no obligations for future service,  
157 no expectations of future revenue, Kennecott's formal departure notice, and the Com-  
158 pany's filed testimony at the time of the ESA's approval, the Company has removed

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<sup>5</sup> Docket No. 16-035-33, Dir. Test. Paul Clements, at 234-242.

REDACTED

159 Kennecott's load from the Integrated Resource Plan (IRP) load forecast beyond De-  
160 cember 31, 2025. Confidential Table 1 provides a summary of the load included for  
161 Kennecott in the last three IRPs.



162

163 **Q. Did the ESA contain provisions for continued service from the Company in the**  
164 **event Kennecott desired to be served by the Company beyond the contract term?**

165 A. Yes. In Section 2.03, the ESA contemplates mutual agreement between the Company  
166 and Kennecott; however, no such mutual agreement has been made by the parties. In  
167 addition, Section 2.04 in the ESA provided Kennecott a unilateral right to terminate the  
168 ESA and [REDACTED]

169 [REDACTED] if it provided formal notice of its intent three  
170 years prior to the intended early termination date. Under the terms of the ESA,  
171 Kennecott's notice was due no later than December 31, 2022.

172 **Q. Did Kennecott exercise its option under the contract and provide timely notice to**  
173 **the Company?**

174 A. No.

175 **Q. Did the Company meet with Kennecott prior to the expiration of the early termi-**  
176 **nation right to discuss continuing service or Kennecott electing its early termina-**  
177 **tion right?**

178 A. Yes. As one of the Company's largest customers, the Company is regularly engaged  
179 with Kennecott regarding its electric service, billing, and contractual terms. In addi-  
180 tion, the ESA included specific meet and confer obligations which required that the  
181 parties meet to discuss ongoing service five years prior to the expiration of the contract.  
182 Several discussions were held during 2020 which fulfilled these obligations; however,  
183 no agreements were made regarding continued service and Kennecott did not elect to  
184 exercise its early termination right.

185 **Q. To date, has Kennecott provided formal withdrawal of its departure notice or for-**  
186 **mally committed to return to utility service?**

187 A. No. To date, the only formal notices Kennecott has provided the Company is the notice  
188 of intent to transfer service to a non-utility energy supplier in accordance with Utah  
189 Code § 54-3-32(3)(a) and the written application with PacifiCorp transmission seeking  
190 to acquire transmission rights to facilitate the transfer. The fact that Kennecott has not  
191 yet committed to ongoing utility service is highlighted in its own application to this  
192 docket where it states "If Kennecott cannot receive service from RMP on [the terms  
193 outlined in its application], it may elect not waive (sic) its rights to transfer service to a  
194 nonutility energy supplier," and later "If Kennecott cannot receive electric service from  
195 RMP consistent with the terms and conditions discussed herein, it must seek electric  
196 service elsewhere."

197 **Q. Did the Company receive informal expressions of interest in returning to the sys-**  
198 **tem from Kennecott?**

199 A. While the Company did receive interest, Kennecott continued to express that its intent  
200 was to depart from the system consistent with its previous formal departure notice,  
201 unless and until Kennecott reached mutual agreement with the Company.

202 Q. **Were these notices sufficient to begin acquiring resources in the event Kennecott**  
203 **returned?**

204 A. No. The Company believes it would have been imprudent to make binding commit-  
205 ments to acquire new generation resources, either as Company owned assets or via  
206 long-term power purchase agreements, without assurance that Kennecott was defini-  
207 tively returning to the Company's system. This position is supported by the ESA pro-  
208 visions that PacifiCorp shall not have any expectation of revenue from Customer be-  
209 yond the term of the agreement or make any claims regarding departure costs from  
210 Kennecott if it continued with its intent to depart in the future.

211 Q. **Mr. Sands states that "Kennecott communicates short-term and long-term load**  
212 **forecast information to RMP each month, as it has for many years."**<sup>6</sup> **Has the Com-**  
213 **pany been able to use this information to include Kennecott's load in any of its**  
214 **long-term resource planning during the nine-year term of the ESA?**

215 A. No. Simply knowing that Kennecott intends to continue utilizing electricity in its oper-  
216 ations does not mean that such electric service will come from the Company. The ESA  
217 and formal departure notice from Kennecott make clear that Kennecott intends to re-  
218 ceive such future service from a third party if the parties do not reach agreement on  
219 terms of continued service.

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<sup>6</sup> Sands Direct Testimony, Lines 107-108.

220 **Q. How much time will remain on the ESA at the time of the Commissions expected**  
221 **order in this docket?**

222 A. Assuming the Commission issues its decision in this proceeding by the end of June  
223 2024, approximately 18 months will remain before the end of the ESA contract term.

224 **Q. Does the Company have significant levels of excess system generation capacity to**  
225 **dedicate to Kennecott's service in this timeline?**

226 A. No. The Company has experienced continued load growth since the ESA was filed in  
227 2016. As a result, the Company has been regularly acquiring new generation resources  
228 to meet load forecasts and anticipates the need to acquire additional resources in the  
229 future to meet further demand. As noted previously, this forecast does not include  
230 Kennecott.

231 **Q. Does the Company anticipate it could acquire additional resources to serve**  
232 **Kennecott in this timeline?**

233 A. No. The Company estimates that it would take approximately four to six years to add  
234 additional generation to meet Kennecott's load without reliance on incremental market  
235 purchases. Included in this timeline is the need for the Company to conduct a new  
236 request for proposals to identify new resources, evaluate the available resource options,  
237 select a final resource portfolio, negotiate contracts for the resources, apply for approv-  
238 als of the resources, and finally construct the necessary generation and transmission  
239 projects.

240 **Q. Given the contract provisions and these timeline constraints, what should the**  
241 **Commission find in relation to Kennecott's demand to be reinstated at tariff rates**  
242 **effective January 1, 2026.**

243 A. The Commission should find that Kennecott has foregone its right for continued service  
244 from the Company at tariff rates starting January 1, 2026. This finding is consistent  
245 with Utah statute as well as under the Commission approved ESA. The Commission  
246 should find that all parties understood these waivers at the time the ESA was approved  
247 and made effective. Further, the Commission should find that, in light of Kennecott's  
248 failure to exercise contractual provisions which would have effectuated the exact treat-  
249 ment requested, ongoing refusal to provide such binding commitment to return through  
250 this day, and the extended timelines required to adjust the Company's resource portfo-  
251 lio, Kennecott's demand to be reinstated at tariff rates effective January 1, 2026, is  
252 contrary to the ESA, unnecessary, and creates undue risks, costs and burdens to other  
253 customers on the Company's system. Finally, the Commission should order that the  
254 parties negotiate in good faith to determine mutually agreeable terms for service effec-  
255 tive January 1, 2026, and upon reaching such terms, to file such agreement for Com-  
256 mission approval prior to its effectiveness, as specified in the Commission-approved  
257 ESA.

258 **Q. Is the Company opposed to providing continued service to Kennecott effective**  
259 **January 1, 2026?**

260 A. No. In fact, the Company welcomes the opportunity to continue being Kennecott's  
261 electric service provider. The Company believes that a Commission order reinforcing  
262 the previously understood intent of the ESA (namely, that the parties must operate  
263 within the provisions of the ESA or reach mutual agreement for continuing service and  
264 Commission approval of such terms) will encourage the parties to engage in meaning-  
265 ful negotiations around continued service terms. The absence of such a finding could

REDACTED

266 create dangerous precedent that customers may abuse the rights afforded in Utah Code  
267 § 54-3-32 by forcing a utility provider to continuously plan for a departed or potentially  
268 departing customer, with no assurance of cost recovery, even if said customer has  
269 signed a binding agreement with the utility provider specifying the specific terms under  
270 which it can elect to return to the utility provider's service.

271 **V. KENNECOTT'S PROPOSAL FOR SERVICES BEGINNING JANUARY 1,**  
272 **2026**

273 **Q. What is Kennecott's proposal with respect to electric service beginning January**  
274 **1, 2026, after the expiration of the current ESA?**

275 A. Kennecott's Application requests that the Commission direct the Company to provide  
276 service beginning January 1, 2026, through December 31, 2032, under a new ESA with  
277 the following terms and conditions listed in Exhibit A attached to the Application.

- 278 1. Term: January 1, 2026, through December 31, 2032, with optional extensions  
279 to align with Kennecott's mine-line plan. If parties are unable to reach agree-  
280 ment on extension, service continues annually at the Company's tariff rates.
- 281 2. Rates: Schedule 31 rates for a transmission voltage customer, subject to change  
282 in future rate cases.
- 283 3. Contract Demand: ■■■ MW for total contract demand and ■■■ MW for supple-  
284 mentary contract demand with ■■■ MW of backup contract demand.
- 285 4. Surcharge Rates: The surcharge rates listed in Electric Service Schedule No.  
286 80 – Summary of Effective Rate Adjustments ("Schedule 80"). Kennecott re-  
287 quests to be exempt from Electric Service Schedule No. 94 - Energy Balancing  
288 Account ("EBA") until the first EBA that trues up costs beginning January 1,  
289 2026.

290 5. Demand Response: Commission should require the Company to discuss rates,  
291 terms and conditions for Kennecott to provide demand response products.

292 6. Renewable Resource Options: Kennecott requests to be permitted to pursue  
293 options to satisfy its corporate decarbonization goals.

294 **Q. Does the Company object to the contract term proposed by Kennecott?**

295 A. In the event the Commission orders a continuing service arrangement, the requested  
296 term is acceptable provided that Kennecott acknowledges permanent return to system  
297 service under Utah Code § 54-3-32.

298 **Q. Should the Commission approve Kennecott’s request to return to Schedule 31 un-**  
299 **der the terms proposed?**

300 A. No. For the reasons specified in the prior section, the proposed changes introduce risk  
301 to the Company’s other Utah customers and should be denied as Kennecott has not  
302 provided sufficient notice for the Company to plan for and serve Kennecott’s load ef-  
303 fective January 1, 2026, without creating significant risk and costs for other customers.  
304 In addition, Schedule 31 sets a limit for the applicability of the tariff at 15,000 kW of  
305 on-site generation. In regards to customers with over 15,000 kW of on-site generation,  
306 Schedule 31 goes on to state, “Partial requirements service from the Company for cus-  
307 tomers with more than 15,000 kW of on-site generation shall be provided under con-  
308 tractual arrangements to be negotiated on a case-by-case basis.” In stark contrast,  
309 Kennecott currently operates approximately 39,000 kW of on-site co-generation facil-  
310 ities and is actively developing approximately [REDACTED]  
311 [REDACTED] which is anticipated to go into service prior to January 1, 2026. Due to  
312 Kennecott operating, or intending to operate, nearly [REDACTED] times the allowable limit for

REDACTED

313 on-site generation under Schedule 31, and the requirements of the Commission-ap-  
314 proved-ESA, the Commission should order Kennecott to reach mutually agreeable  
315 terms with PacifiCorp on the rates and terms for back-up service to its facility, subject  
316 to Commission approval. In the event the Commission orders a continuing service at  
317 a specific rate in this Docket, the Commission should further order that such rate is  
318 subject to change if the level of on-site generation changes in the future.

319 **Q. Does the Company object to Kennecott's requested level of Contract Demand?**

320 A. No. Today, Kennecott is contracted for a maximum contract demand of [REDACTED] kW.  
321 Reducing the Contract Demand to [REDACTED] kW effective January 1, 2026, is acceptable  
322 to the Company.

323 **Q. Does the Company object to Kennecott's requested level of Supplemental Demand  
324 and Backup Demand?**

325 A. Yes. The Company understands that Kennecott intends to operate at least [REDACTED] kW  
326 of on-site generation effective January 1, 2026. The Company believes that the appro-  
327 priate Back-up Demand level is therefore [REDACTED] kW with the remaining service under  
328 Supplemental Service.

329 **Q. Mr. Sands discusses the various rate schedule adjustments that Kennecott believes  
330 should be applicable to Kennecott beginning January 1, 2026, can you  
331 summarize his re-quest?**

332 A. Kennecott states it should be subject to the rate schedule adjustments listed in Schedule  
333 80 which include the following electric service schedules:

- 334 • Schedule 91 – Surcharge to Fund Low Income Residential Lifeline Program
- 335 • Schedule 94 – Energy Balancing Account

- 336 • Schedule 97 – Wildfire Mitigation Balancing Account
- 337 • Schedule 98 – REC Revenue Adjustment
- 338 • Schedule 193 – Demand Side Management Cost Adjustment
- 339 • Schedule 197 – Federal Tax Adjustment
- 340 • Schedule 198 – Electric Vehicle Infrastructure Program Cost Adjustment

341 For Schedule 94, Kennecott specifies that any EBA rates would only apply once the  
342 rates from the EBA proceeding that trues up EBA costs starting January 1, 2026, begin.  
343 Under the current EBA cycles, this would be the EBA filed May 1, 2027, with interim  
344 rates July 1, 2027, that collects deferred costs associated with calendar year 2026.

345 **Q. After reviewing the list of rate schedules on Schedule 80, does the Company have**  
346 **any modifications in consideration of Kennecott’s specific circumstances?**

347 A. While the Company disagrees with an immediate return to tariff rates in general, the  
348 Company generally agrees that, if Kennecott is restored at tariff rates, it should pay the  
349 surcharges that would be applicable to any other large industrial customer. The Com-  
350 pany disagrees that the applicability of the EBA should be deferred until 2027 as de-  
351 scribed by Kennecott. Such treatment is inconsistent with all other Schedule 31 cus-  
352 tomers as well as for all new customers to the Company’s system which immediately  
353 begin service at the then-existing tariff rates.

354 The Company further proposes that Schedule 98 should not apply to Kennecott  
355 until the rates reflect REC revenue true-up for 2026 since the REC revenue true up  
356 prior to 2026 will include revenue Kennecott that pays for system RECs under the Non-

357 Gen/REC Agreement. Applying Schedule 98 to Kennecott's service immediately be-  
358 ginning in 2026 would result in a partial refund of Kennecott's costs to purchase system  
359 RECs during calendar year 2025.

360 **Q. What does Kennecott request with regards to demand response?**

361 A. Kennecott expresses interest and ability to provide demand response products, which  
362 it states will reduce the need for the Company to acquire additional generation, trans-  
363 mission, and storage resources. Kennecott does not specify the types of products it  
364 envisions but requests the Commission to direct the Company to engage in discussions  
365 regarding rates and terms for demand response products.

366 **Q. Is it necessary for the Commission include a directive in its order in this matter  
367 for the Company to do so?**

368 A. No. After determining whether, and under what rates, Kennecott will be returning to  
369 the Company's system, the Company welcomes the opportunity to evaluate any poten-  
370 tial demand response products Kennecott may be capable of offering. Depending on  
371 the specifics of Kennecott's capabilities, the products may be eligible for existing de-  
372 mand response programs or could be contracted between the parties under separate  
373 agreement, subject to Commission approval.

374 **Q. What potential strategies does Mr. Sands describe with respect to renewable re-  
375 source options to meet Kennecott's decarbonization goals?**

376 A. Kennecott mentions it continues to explore the following options for which it states it  
377 must retain the flexibility to include in any future agreement with the Company:

- 378 1. Execute agreements to purchase RECs,
- 379 2. Expansion of its onsite 5 MW solar resource, and

380                   3. Acquisition of new offsite non-emitting generation resources through Elec-  
381                   tric Service Schedule No. 32 – Service From Renewable Energy Facilities  
382                   (“Schedule 32”), Electric Service Schedule No. 34 – Renewable Energy  
383                   Purchases for Qualified Customers 5000kW and Over (“Schedule 34”) or a  
384                   “Virtual Power Purchase Agreement”.

385 **Q.     What does Kennecott request from the Commission with regards to decarboniza-**  
386 **tion options?**

387 A.     Kennecott requests the Commission approve its application, including its request for  
388 flexibility to pursue these potential options. Specifically, Kennecott claims that it will  
389 meet its decarbonization goals if the Commission gives it the flexibility to “pursue all  
390 options available to industrial RMP customers.”<sup>7</sup>

391 **Q.     What does the Company understand Kennecott’s statement to mean?**

392 A.     Kennecott’s request to the Commission is to be granted the right to pursue the options  
393 listed as options available to the Company’s Utah industrial customers; however, this  
394 request is predicated on the assumption that the options listed are available to the Com-  
395 pany’s large industrial customers.

396 **Q.     Is the option to purchase system RECs available to other large industrial custom-**  
397 **ers?**

398 A.     No. Many of the Company’s large industrial customers have communicated similar re-  
399 newable energy goals. However, other large industrial customers do not have the option  
400 to purchase Utah-allocated system-generated RECs in a manner that is similar to the  
401 REC purchases under the Non-Gen/REC Agreement.

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<sup>7</sup> *Id.* at 171-172.

402 **Q. Should the Commission order an extension to the Non-Gen/REC Agreement or**  
403 **for the parties to negotiate additional REC sale agreements.**

404 A. No. The Commission should not order extension of the existing agreement or mandate  
405 the negotiation of a replacement agreement as such treatment is not available to other  
406 customers. Opening up an option for Kennecott or other large industrial Utah custom-  
407 ers to force the purchase large blocks of Utah-allocated, system-generated RECs could  
408 result in exhausting the Company's Utah-allocated REC bank, compromising the Com-  
409 pany's ability to meet its renewable energy goal under §54-17-602 and/or its ability to  
410 monetize RECs through third-party market transactions on behalf of all Utah customers  
411 to lower rates.

412 The Company would instead encourage Kennecott to participate in its standard  
413 REC sale process and to provide arms-length bids for any RECs it would like to pur-  
414 chase to ensure equal access to all parties.

415 **Q. Is the option to install additional on-site generation available to other large indus-**  
416 **trial customers?**

417 A. Yes.

418 **Q. Does the Company have any concerns with Kennecott's pursuit of additional on-**  
419 **site generation?**

420 A. The Company is not opposed to Kennecott developing on-site generation; however,  
421 any service agreement with Kennecott would need to address certain risks associated  
422 with unexpected changes in Kennecott's load due to additional on-site generation. As  
423 detailed previously, Kennecott already exceeds the tariff limit on the quantity of on-site

424 generation to qualify under Schedule 31 and Kennecott's failure to utilize its contrac-  
425 tual options to provide the Company advance notice of its return to the system has  
426 created difficulties associated with acquiring additional resources needed to serve  
427 Kennecott's load effective January 1, 2026. As a result, the Company is concerned that,  
428 absent sufficient advance notice and cooperation, the Company could acquire new re-  
429 sources to serve Kennecott's load only to see those resources become unnecessary due  
430 to Kennecott developing large-scale on-site generation. Such an event could result in  
431 stranded costs and/or cost increases for other customers.

432 **Q. Should the Commission issue an order with regards to additional on-site genera-**  
433 **tion?**

434 A. In light of the above risks, the Company believes a Commission order directing the  
435 parties to negotiate future service terms in good faith should also encourage the parties  
436 to negotiate acceptable notice provisions prior to Kennecott installing additional on-  
437 site generation to aid in the Company's planning process. If the Commission elects to  
438 order a specific contract or tariff structure between the Parties in lieu of enforcing the  
439 terms of the ESA, the Commission should include specific provisions addressing this  
440 risk including a minimum notice period of six years as well as pricing re-openers with  
441 regards to the costs of backup-service should additional on-site generation be installed  
442 as is consistent with Schedule 31.

443 **Q. Is the option to participate in Schedule 32 or Schedule 34 available to other large**  
444 **industrial customers?**

445 A. Yes.

446 **Q. Does the Company have any concerns with Kennecott’s pursuit of Schedule 32 or**  
447 **Schedule 34.**

448 A. Only insofar as the continued non-committal nature of Kennecott’s interest further  
449 complicates system planning and creates a risk of the Company over-procuring its gen-  
450 eration needs as detailed above in relation to unanticipated large-scale on-site genera-  
451 tion.

452 **Q. Should the Commission issue an order with regards to participation in Schedule**  
453 **32 or Schedule 34?**

454 A. In light of the above risks, the Company believes the Commission order directing the  
455 parties to negotiate future service terms in good faith should also encourage the parties  
456 to negotiate acceptable notice provisions prior to Kennecott participating in Schedule  
457 32 or Schedule 34 to aid in the Company’s planning process. If the Commission  
458 elects to order a specific contract or tariff structure between the parties in lieu of  
459 enforcing the terms of the ESA, the Commission should include specific provisions  
460 addressing this risk including a minimum notice period of six years prior to Kennecott  
461 participat-ing in Schedule 32 or Schedule 34.

462 **Q. Is the option to participate in “Virtual Power Plants” available to other large in-**  
463 **dustrial customers?**

464 A. The Company is not confident it understands the entirety of the transaction contem-  
465 plated by Mr. Sands; however, his testimony appears to make clear that the contem-  
466 plated transaction is outside of the Company’s service territory and fully independent  
467 of Kennecott’s electric service. As a result, the Company considers this request to be

468 akin to purchasing RECs through independent brokers and thus it is theoretically avail-  
469 able to other industrial customers; albeit, not through the Company's electric service  
470 tariffs.

471 **Q. Does the Company have any concerns with Kennecott's pursuit of "Virtual Power**  
472 **Purchase Agreements?"**

473 A. Provided the above assumptions are true, the Company has no concerns with the con-  
474 templated REC purchase agreement(s). If, however, either assumption is incorrect, the  
475 Company would likely object to the transaction and insist upon structuring such a deal  
476 within the existing tariff requirements of Schedule 32 or Schedule 34; and for such  
477 arrangement to be subject to Commission approvals.

478 **Q. Should the Commission issue an order with regards to "Virtual Power Purchase**  
479 **Agreements?"**

480 A. The Company believes the Commission order directing the parties to negotiate future  
481 service terms in good faith would reaffirm that transactions within the Company's ser-  
482 vice territory and/or impacting the Company's retail service must be in compliance with  
483 the Company's tariff and be subject to Commission approvals. If the Commission elects  
484 to order a specific contract or tariff structure between the Parties in lieu of enforcing  
485 the terms of the ESA, the Commission could include specific provisions addressing  
486 these topics as well though the necessity of such provisions is uncertain.

## 487 **VI. ROCKY MOUNTAIN POWER'S PROPOSAL FOR FUTURE SERVICE**

488 **B. You've detailed various aspects of Kennecott's request which introduce significant**  
489 **risks to the Company's other Utah customers, can you summarize those concerns?**

490 A. The Company's concerns can be summarized as follows:

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- 491
- The Company has not included Kennecott's load in its load forecasts beyond
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- Kennecott elected to not exercise its contractual rights to terminate the ESA
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- The Company does not have adequate time to acquire incremental resources to
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- Kennecott intends to operate approximately [REDACTED] kW of on-site generation
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- Kennecott requests inadequate back-up demand in relation to its existing and
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- Kennecott's stated desires to continue pursuing additional on-site generation
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511           • Kennecott’s stated desires to continue pursuing incremental resources under  
512           Schedule 32 or Schedule 34 further complicate the Company’s ability to fore-  
513           cast and acquire proper levels of generation to serve its load creating significant  
514           risk of over or under procurement.

515   **Q.   How does the Company propose the Commission could best address these con-**  
516   **cerns?**

517   A.   The Company believes the proper course of action remains the same as specified in the  
518   ESA and as understood at the time of its approval, namely, that absent Kennecott exer-  
519   cising the early termination provisions of the contract, that the parties reach mutual  
520   agreement on the terms and conditions of continued service.

521           The Company proposes that the Commission issue an order reiterating the fact  
522   that Kennecott has relinquished its unilateral rights to return to tariff rate service effec-  
523   tive January 1, 2026, due to its failure to provide timely formal return notice and that  
524   the parties should submit any agreed upon extension terms for Commission approval.  
525   Further, the Commission’s order to engage in negotiations could be further bolstered  
526   by instructing the parties to actively address known risks stemming from (i)  
527   Kennecott’s exclusion from the Company’s load forecasting as a result of the terms of  
528   the ESA and Kennecott’s active departure notices, (ii) the anticipated near-term reliance  
529   on incremental market purchases should Kennecott continue taking service from the  
530   Company effective January 1, 2026, (iii) the need to identify just and reasonable back-  
531   up service costs due to Kennecott’s large quantity of on-site generation, (iv) the need  
532   to include reasonable levels of contractual back-up demand in relation to on-site re-  
533   sources, (v) the need to include reasonable coordination on the addition of new on-site

534 generation to aid in the Company's resource procurement efforts, and (vi) the need to  
535 include reasonable coordination on the addition of new Schedule 32 or Schedule 34  
536 generation to aid in the Company's resource procurement efforts. Such an order would  
537 allow the parties to negotiate terms and conditions with added clarity and ability to  
538 address the concerns listed above. Upon reaching such terms, the parties would submit  
539 the rates, terms and conditions to the Commission for approvals to ensure that they  
540 were just, reasonable, and in the public interest.

541 **Q. Would Kennecott's proposal provide a similar ability to address these risks?**

542 A. No. Instead of addressing the challenges, Kennecott seeks to transfer these risks fully  
543 on all of the Company's other customers by demanding the Commission grant it a do-  
544 over on its unencumbered choice to not exercise its rights under the ESA despite having  
545 full knowledge of its pending, and still active, departure notice.

546 **Q. To be clear, does the Company object to providing electric service to Kennecott  
547 under cost-of-service rates at any time in the future?**

548 A. No. The Company supports Kennecott's desire to return to the Company's system at  
549 cost-of-service rates following sufficient notice to plan for and serve Kennecott's pre-  
550 viously unplanned load; however, no such proposal has been put forth by Kennecott.  
551 Based on current load growth forecasts and in light of the extended timelines associated  
552 with constructing new generation resources, as well as any associated transmission fa-  
553 cilities to enable the generating resources, the Company estimates that a six-year in-  
554 terim period following formal and irrevocable notice of return would be required. Dur-  
555 ing the intervening period, the Company anticipates negotiating commercial terms

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556 which would ensure adequate price protections to other customers addressing the risk  
557 of added costs from increased market purchases.

558 **VII. ALTERNATIVE ROCKY MOUNTAIN POWER PROPOSAL FOR FU-**  
559 **TURE SERVICE IN THE EVENT THE COMMISSION DOES NOT EN-**  
560 **FORCE THE ESA**

561 **Q. In the event the Commission elects to order rates and terms of service effective**  
562 **January 1, 2026, in lieu of enforcing the obligations of the ESA and Schedule 31**  
563 **for the parties to negotiate the rates and terms of service, would the Company**  
564 **suggest changes to Kennecott’s proposal?**

565 **A.** Yes. Specifically, the Company would propose the following changes to Kennecott’s  
566 proposal:

- 567 • Specify that for the period of January 1, 2026, through the thirty-first (31<sup>st</sup>) of  
568 December in the calendar year not less than six years following formal and ir-  
569 revocable notice of Kennecott’s permanent return to system service, all “En-  
570 ergy” shall be billed at the higher of (i) the Energy charges established in Sched-  
571 ular 9 or (ii) a real-time energy cost established by the Commission.
- 572 • Replace the references to current Schedule 31 rates with the obligation to es-  
573 tablish new customer-specific back-up service charges in a future rate proceed-  
574 ing in accordance with the 15,000 kW limit on the applicability of Schedule 31  
575 rates.
- 576 • Revise the Supplementary Contract Power level to [REDACTED] kW.
- 577 • Revise the Backup Contract Power Level to [REDACTED] kW.

- 578           • Include contractual obligations to provide six-year notice prior to the installa-  
579           tion of additional on-site generation subject to waiver by the Commission in the  
580           event acceleration of such generation is found to be in the public interest.
- 581           • Establish obligations for the parties to file updated back-up demand rates and  
582           terms for commission approvals in the event on-site generation has or is antic-  
583           ipated to change from its current nameplate capacity.
- 584           • Include contractual obligations to provide six-year notice prior to participating  
585           in Schedule 32 or Schedule 34 subject to waiver by the Commission in the event  
586           acceleration of such participation is found to be in the public interest.
- 587           • Reinstate applicability of Schedule 94 consistent with treatment of all other  
588           Schedule 31 customers effective January 1, 2026.
- 589           • Remove applicability of Schedule 98 through December 31, 2026, due to im-  
590           pacts from Kennecott’s ongoing purchase of RECs through the end of calendar  
591           year 2025 under the Non-Gen/REC Agreement.

592 **Q.    The Company’s proposed changes notably defer the establishment of applicable**  
593 **back-up rates to a later rate proceeding. Can you explain why this is the case?**

594 A.    Yes. First, the Company notes that its preferred outcome to this proceeding is for the  
595       parties to follow the terms of the ESA and negotiate rates and terms for continued ser-  
596       vice following affirmation of the ESA’s provisions. Second, Schedule 31 explicitly re-  
597       quires customers with more than 15,000 kW of on-site generation, such as Kennecott,  
598       to negotiate such levels of back-up service on a case-by-case basis with the Company.  
599       Third, it is unclear whether Kennecott itself intends its application for use of Schedule

600 31 to imply the standard Schedule 31 rates or if it also acknowledges the need to estab-  
601 lish separate case-specific rates due to its outsized quantity of on-site generation stating  
602 in various aspects of its application and support, “Kennecott acknowledges that Sched-  
603 ule 31 applies to customers with onsite generation up to 15 MW and that Schedule 31  
604 requires that customers with generation capacity in excess of 15 MW must negotiate a  
605 special contract with Rocky Mountain Power;”<sup>8</sup> “I expect that the Schedule 31 rates  
606 and rate components applicable as of January 1, 2026, will be set in the next general  
607 rate case;”<sup>9</sup> and “The current rates and rate components from Schedule 31 are set forth  
608 below, but are subject to change pursuant to Commission order in connection with the  
609 next RMP general rate case.”<sup>10</sup> Based on these statements, the Company believes that  
610 Kennecott concurs that the specifics of the backup service costs should be deferred to  
611 later negotiation and/or a separate rate proceeding prior to January 1, 2026.

612 In the event that this is not Kennecott’s intent, but rather that Kennecott is de-  
613 manding that it should receive rates applicable to customers which are not similarly  
614 situated, and inconsistent with the referenced tariff schedule, the Company finds no  
615 study or calculation of cost recovery supporting such demands by Kennecott and such  
616 demands should be rejected. As this Docket was initiated by Kennecott, the Company  
617 has no separate cost of study modeling prepared supporting this or other specific treat-  
618 ments and thereby must defer any definitive conclusion on rates for backup service to  
619 a later negotiation, subject to approval by the commission, or later rate proceeding.

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<sup>8</sup> *Id.* at 332-334.

<sup>9</sup> *Id.* at 286-287.

<sup>10</sup> Kennecott Exhibit A.

**VIII. CONCLUSION**

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**Q. What is your recommendation for the Commission in this proceeding?**

A. I recommend that the Commission reject Kennecott’s proposed terms and conditions and enter an order establishing just and reasonable rates, terms, and conditions of service consistent with my testimony above.

Specifically, I request that the Commission issues an order reiterating the fact that Kennecott has relinquished its unilateral rights to return to tariff rate service effective January 1, 2026, due to its failure to provide timely formal return notice and that the parties should submit any agreed upon extension terms for Commission approval. This would be consistent with Utah Statutes and the mutually executed and Commission approved ESA between the Company and Kennecott.

Further, the Commission’s order to engage in negotiations could be further bolstered by instructing the parties to actively address known risks stemming from: (i) Kennecott’s exclusion from the Company’s load forecasting as a result of the terms of the ESA and Kennecott’s active departure notices; (ii) the anticipated near-term reliance on incremental market purchases should Kennecott continue taking service from the Company effective January 1, 2026; (iii) the need to identify just and reasonable back-up service costs due to Kennecott’s large quantity of on-site generation; (iv) the need to include reasonable levels of contractual back-up demand in relation to on-site resources; (v) the need to include reasonable coordination on the addition of new on-site generation to aid in the Company’s resource procurement efforts; and (vi) the need to include reasonable coordination on the addition of new Schedule 32 or Schedule 34 generation to aid in the Company’s resource procurement efforts. Such an order would

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643 allow the parties to negotiate terms and conditions with added clarity and ability to  
644 address the concerns listed above.

645 If the Commission does not order the parties to negotiate in good faith per the  
646 terms of the ESA regarding rates and terms of ongoing service, but instead orders rates  
647 and terms for ongoing service, I request that the Commission modify Kennecott's re-  
648 quest to: (i) ensure proper alignment of incremental market purchase costs with  
649 Kennecott's retail rates; (ii) replace the references to existing Schedule 31 rates with  
650 the obligation to establish new customer-specific back-up service charges in a future  
651 rate proceeding; (iii) revise the Supplementary Contract Power level to [REDACTED] kW;  
652 (iv) revise the Backup Contract Power Level to [REDACTED] kW; (v) include contractual  
653 obligations to provide adequate notice prior to the installation of additional on-site gen-  
654 eration; (vi) establish obligations for the parties to file updated back-up demand rates  
655 and terms in the event on-site generation has or is anticipated to change; (vii) include  
656 contractual obligations to provide adequate notice prior to participating in Schedule 32  
657 or Schedule 34; (viii) reinstate applicability of Schedule 94 consistent with treatment  
658 of all other partial requirements customers; and (ix) remove applicability of Schedule  
659 98 through December 31, 2026.

660 **Q. Does this conclude your direct testimony?**

661 **A. Yes.**

**CERTIFICATE OF SERVICE**

Docket No. 23-035-51

I hereby certify that on February 14, 2024, a true and correct copy of the foregoing was served by electronic mail to the following:

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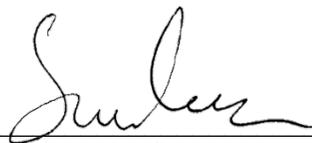
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