

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION OF
KENNECOTT UTAH COPPER, LLC FOR AN ORDER
DETERMINING RATES, TERMS, AND CONDITIONS
OF ELECTRIC SERVICE BY ROCKY MOUNTAIN
POWER TO KENNECOTT

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DOCKET No. 23-035-51
Exhibit No. DPU 1.0 DIR
Jeffrey S. Einfeldt

FOR THE DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH

Direct Testimony of

Jeffrey S. Einfeldt

March 20, 2024

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TITLE.**

2 A. My name is Jeffrey S. Einfeldt. My business address is 160 East 300 South, Salt
3 Lake City, Utah 84114. I am a Utility Technical Consultant with the Division of
4 Public Utilities (“Division” or “DPU”).

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A. The Division.

7 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

8 A. I received a Bachelor of Science and a master’s degree in Accounting from the
9 University of Utah. I received my master’s degree in 1983 and became a Certified
10 Public Accountant shortly thereafter. I also obtained additional professional
11 certifications, including Certified Internal Auditor and Certified Fraud Examiner.

12 **Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

13 A. I have worked for the Division as a Utility Analyst and a Utility Technical Consultant
14 for more than 7 years. I previously worked as an external auditor for a large CPA
15 firm and as a consultant specializing in forensic accounting, with an emphasis in
16 bankruptcy and insolvency matters and general business disputes. I have prepared
17 investigative reports and testified in numerous bankruptcy proceedings and general
18 business matters. I’ve also worked as an auditor for an international charitable
19 organization and as the Chief Financial Officer for a not-for-profit organization.

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21 **Q. PLEASE DESCRIBE YOUR POSITION AND DUTIES WITH THE DIVISION.**

22 A. As a Utility Technical Consultant, I examine public utility financial data and review
23 applications for rate increases, filings for compliance with existing programs, and
24 various other matters. I research and analyze a variety of regulatory matters and
25 assist in establishing the Division's position on those regulatory matters. In
26 addition, I assist in case preparation by analyzing the testimony and filings of
27 other intervenors. I prepare and assist in the Division's preparation of written and
28 sworn testimony in hearings before the Public Service Commission of Utah
29 ("Commission") and testify on certain matters before the Commission.

30 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

31 A. Yes.

32 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY FOR THIS**
33 **DOCKET.**

34 A. The purpose of my testimony is to present the Division's position regarding proposed
35 terms and conditions of the Electric Service Agreement ("ESA") being negotiated
36 between Rocky Mountain Power ("RMP") and Kennecott Utah Copper, LLC
37 ("Kennecott").

38 **Q. WHY HAS KENNECOTT FILED THIS APPLICATION?**

39 A. Kennecott currently receives service from RMP under a special contract (ESA)
40 executed on July 28, 2016, that is set to expire on December 31, 2025. Kennecott
41 has provided written notice to RMP that it intends to transfer service to a nonutility
42 energy supplier. Kennecott is currently a customer of RMP and has not transferred

43 service to a nonutility energy supplier, however, it has not withdrawn its notice of
44 intent to do so. Kennecott requests the Commission order RMP to enter a contract
45 with Kennecott to provide electric service at Schedule 31 rates to commence
46 January 1, 2026, at the conclusion of the current ESA, and to allow Kennecott to
47 pursue its decarbonization goals, whereby Kennecott will waive its right to receive
48 service from a nonutility energy supplier.¹

49 **Q. IN SUMMARY, WHAT IS THE DIVISION'S POSITION IN THIS MATTER?**

50 A. RMP and Kennecott are both sophisticated parties capable of representing their
51 respective interests in this matter. Neither the DPU nor the Commission is in a
52 position to negotiate a contract on the parties' behalf. RMP's existing tariff schedules
53 may be ill-suited to Kennecott's circumstances. Thus, a renewal or extension of the
54 current contract, or Kennecott's conversion to current tariff rates is likely not in the
55 public interest. Accordingly, the Division recommends the following guidelines for the
56 ESA:

- 57 • A special contract is warranted when a customer has unique
58 characteristics not reflected in current rate structures.
- 59 • A special contract should cover the actual costs of serving that customer
60 and provide meaningful contributions to overall system costs so other
61 customers are not harmed by the contract.

¹ See Application of Kennecott Utah Copper, LLC for an Order Determining the Rates, Terms, and Conditions of Electric Service by Rocky Mountain Power to Kennecott ¶¶ 4-7.

- 62 • Sufficient notice regarding changes in load requirements due to
63 Kennecott's development or acquisition of resources to serve its load to
64 allow RMP to conduct proper resource planning.

- 65 • Sufficient notice to RMP of changes in Kennecott's operations to allow
66 RMP to optimally plan and acquire resources to efficiently operate its
67 system.

- 68 • Protective measures to ensure that other RMP customers are not left
69 paying for unused resources and stranded costs due to load changes and
70 variability sought by Kennecott.

- 71 • Any uncovered or stranded costs resulting from changes in Kennecott's
72 load requirement should be borne by the contracting parties. RMP's other
73 ratepayers should be protected from these possible costs.

74 **Q. BRIEFLY SUMMARIZE THE UNIQUE CIRCUMSTANCES REGARDING THIS**
75 **APPLICATION.**

76 A. As advocates for the broad public interest, the DPU finds itself in an unusual
77 position in this docket. Kennecott and RMP have not been able to come to an
78 agreement on specific terms for a future contract. Generally, when the DPU has
79 reviewed special contracts or power purchase agreements, a contract between
80 two parties exists with a relationship expected to continue into the future that is
81 the same as or very similar to the existing relationship. The specific terms of the
82 proposed contract are generally similar to the existing contract and have been
83 negotiated in good faith. The terms of that agreement are more easily and
84 meaningfully compared to the prior contract and evaluated against any current

85 changes in the energy environment to determine if the proposed contract rates
86 are just and reasonable and in the public interest.

87 In this docket, Kennecott requests the new contract provide service at Schedule
88 31 rates. However, the existing tariffs, particularly Schedule 31, were created
89 assuming Kennecott was not part of any class and that Kennecott would acquire
90 sufficient power from a nonutility energy provider pursuant to Section 2.04 of its
91 current ESA. In addition, significant time has transpired since the negotiation of
92 the current ESA, and the approval of current tariff rates. The power industry in
93 general has also experienced significant volatility and change during this time.
94 Kennecott's power needs and decarbonization goals have also changed.

95 The DPU is not in a position to propose specific rates for a proposed contract in
96 this docket. Simply ordering Kennecott onto Schedule 31 rates through a new
97 contract while allowing Kennecott simultaneously to pursue alternative power
98 sources and decarbonization goals without proper guardrails is not in the public
99 interest. Doing so would likely force RMP to acquire resources to meet
100 Kennecott's significant load requirements without assurances that the cost of
101 those resources will not be shifted to other RMP customers.

102 **Q. WHAT ARE THE DIVISION'S RECOMMENDATIONS REGARDING A FUTURE**
103 **ESA'S TERMS AND CONDITIONS?**

104 A. The DPU finds the proposed six-year term is reasonable based on Kennecott's
105 current mine plan conditions, provided that contract provisions are in place to

106 protect RMP's other customers from bearing costs due to future short-term
107 energy market volatility, and acquiring certain resources to meet Kennecott's
108 corporate energy policy. Certain guardrails should be implemented in a proposed
109 contract to allow pricing adjustments during the term of the contract.

110 **Q. WHAT DOES THE DIVISION RECOMMEND IN THIS DOCKET?**

111 A. The Division's role in this docket is not to order the terms of a special contract.
112 The Division recognizes the positions of both parties and encourages them to
113 engage in future discussions and negotiations to reach an agreement that, taken
114 as a whole, is just, reasonable, results in just and reasonable rates, and is in the
115 public interest. The parties should determine the length of time that Kennecott
116 will be served by RMP and calculate an appropriate cost of service that is just
117 and reasonable and ensures that other customers are not adversely impacted.

118 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

119 A. Yes.