

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

DIRECT TESTIMONY OF

BELA VASTAG

FOR THE

OFFICE OF CONSUMER SERVICES

MARCH 20, 2024

REDACTED VERSION

1 **Q. WHAT IS YOUR NAME, BUSINESS ADDRESS AND OCCUPATION?**

2 A. My name is Béla Vastag. My business address is 160 East 300 South Salt
3 Lake City, Utah 84111. I am a Utility Analyst for the Utah Office of
4 Consumer Services (“OCS”).

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. I will address the matter that is before the Utah Public Service Commission
7 (“PSC”) in this proceeding which is Kennecott Utah Copper, LLC’s
8 (“Kennecott”) request for the PSC to determine under what arrangement
9 should Kennecott receive electric service from Rocky Mountain Power
10 (“RMP”) when its Electric Service Agreement (“ESA”) expires on December
11 31, 2025. First, it should be clear that the OCS does not believe that its role
12 in this docket is to negotiate a new rate structure between RMP and
13 Kennecott. Therefore, the primary purpose of this testimony is to highlight
14 the issues and principles that the OCS recommends the PSC should
15 consider when deciding what should be in place starting January 2026 when
16 Kennecott’s existing ESA expires. I first point out that it appears that
17 Kennecott and RMP disagree whether certain terms in the current ESA
18 have been met. My testimony also responds to some specific elements of
19 the rate proposals regarding DSM, EBA and RBA put forth in Kennecott and
20 RMP’s direct testimonies.

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24 **Background on RMP Providing Electric Service to Kennecott**

25 **Q. BASED ON THEIR FILED DIRECT TESTIMONY, THERE APPEARS TO**
26 **BE A DISPUTE BETWEEN RMP AND KENNECOTT AS TO WHETHER**
27 **THE CONTRACTUAL TERMS WERE MET IN ORDER FOR RMP TO**
28 **SERVE KENNECOTT AT THE CONCLUSION OF KENNECOTT'S**
29 **CURRENT ESA. WHAT IS YOUR OPINION ON THIS ISSUE?**

30 A. I do not have an opinion on this specific issue and the OCS does not intend
31 to take a position on whether contractual terms were met. However, I note
32 that, per Utah Code Section 54-4-4, the PSC may order new rates for
33 Kennecott if the PSC finds that the current rates are “unjust; unreasonable;
34 discriminatory; preferential; in violation of any provisions of law; or are
35 insufficient.” If the PSC makes such a finding, Section 54-4-4 further states
36 that “the commission shall determine the just, reasonable, or sufficient
37 rates, fares, tolls, rentals, charges,, or contracts to be thereafter
38 observed and in force.”

39 **Q. WHEN KENNECOTT'S ESA EXPIRES ON JANUARY 1, 2026, UNDER**
40 **WHAT RMP TARIFFED SCHEDULES WOULD KENNECOTT BE**
41 **ELIGIBLE TO TAKE ELECTRIC SERVICE FROM RMP?**

42 A. Based on my reading of and research into RMP Schedule 31, there appears
43 to be no Schedules under which Kennecott could take tariffed electric
44 service. The Stipulation establishing the current version of Schedule 31 in
45 Docket No. 13-035-196 states that RMP customers with onsite generation
46 between 1 MW and 15 MW are required to take service under Schedule 31

47 and customers with onsite generation over 15 MW “will be served under a
48 special contract to be negotiated by the relevant parties and approved by
49 the Commission.”¹ Kennecott has more than 15 MW of onsite generation²
50 and therefore does not appear to qualify for any of RMP’s tariffed
51 Schedules.

52 **Q. DID THE OCS SUPPORT THE STIPULATION THAT SET UP THESE**
53 **SPECIFIC TERMS FOR SCHEDULE 31 IN DOCKET NO. 13-035-196?**

54 A. Yes.

55 **Q. DOES THE OCS NOW SEE A PROBLEM WITH THESE TERMS?**

56 A. Yes, the OCS now believes that any customer eligible to receive service
57 from RMP should be able to do so under an existing Schedule in RMP’s
58 tariff. Section 2.04 of Kennecott’s current ESA addressing [REDACTED]

59 [REDACTED]

60 [REDACTED]

61 [REDACTED]

62 [REDACTED] There should

63 always be an option for tariffed service instead of relying on a special

64 contract. When a customer is taking service under an existing ESA, that

65 customer should be able to move to tariffed rates when its ESA ends. In

66 such circumstances, a customer may not receive credit for all of its unique

¹ See Docket No. 13-035-196, Settlement Stipulation filed June 25, 2014 at <https://pscdocs.utah.gov/electric/13docs/13035196/257395RMPSettleStip6-25-2014.pdf>.
² Kennecott has over 44 MW of onsite generation, see paragraphs 12 and 13 of Kennecott’s November 13, 2023 Application.

67 characteristics. However, it should not be required to enter into extensive
68 negotiations to simply receive electric service.

69 **Q. IN THIS INSTANCE, DO YOU HAVE ANY CONCERNS ABOUT**
70 **KENNECOTT RETURNING FOR SERVICE UNDER MORE**
71 **STANDARDIZED TARIFFED TERMS?**

72 A. Yes. Because of Kennecott's unique load profile and significant on-site
73 generation, it is not clear what tariffed schedule provides rates that
74 adequately match Kennecott's cost of service. As discussed later in this
75 testimony, RMP's tariff should be updated so that it is clear to any eligible
76 customer under what Schedules they qualify for electric service. I am also
77 concerned about whether RMP has planned adequately to begin serving
78 Kennecott's load in less than two years.

79 **Q. WHY IS IT IMPORTANT TO KNOW WHETHER RMP HAS ADEQUATE**
80 **RESOURCES TO SERVE KENNECOTT AFTER THE TERMINATION OF**
81 **KENNECOTT'S CURRENT ESA?**

82 A. If RMP did not plan for Kennecott to remain on its system and therefore
83 would not have adequate system resources, there may be higher costs to
84 serve this additional load and some of these costs could be shifted to other
85 customers. In my opinion, the record currently lacks clarity on whether
86 Kennecott gave RMP adequate notice during the negotiations for a new
87 ESA and whether this would require RMP to plan for Kennecott's load
88 beyond December 31, 2025. If the PSC finds that Kennecott gave adequate
89 notice, then it should require RMP to implement new terms for service to

90 Kennecott and also ensure that costs to other customers are not increased
91 by the inclusion of Kennecott's load. If the PSC finds that Kennecott did not
92 give adequate notice, then the PSC should require RMP to develop short
93 term contractual terms that ensure that Kennecott pays the full costs to
94 serve it during the transitional period when new resources are being
95 procured.

96 **Q. COULD KENNECOTT INSTEAD LEAVE RMP'S SYSTEM, OR IN OTHER**
97 **WORDS, TAKE ELECTRIC SERVICE FROM ANOTHER PROVIDER?**

98 A. Yes, Utah Code Section 54-3-32 allows Kennecott to transfer its electric
99 service to a nonutility energy supplier. Kennecott has stated that this option
100 remains available because they have provided written notice to RMP that
101 they may transfer service.³ Kennecott has also stated in its Application that
102 it will waive its right to transfer service if it can receive its requested
103 conditions of service which are based on tariffed service under Schedule 31
104 after its current ESA expires. To be clear, Kennecott's
105 Application also indicates that tariffed service under Schedule 31 requires
106 Kennecott to enter into a new ESA with RMP.

107 **Q. IF KENNECOTT CHOOSES THE OPTION TO TRANSFER ITS**
108 **ELECTRIC SERVICE TO A NONUTILITY PROVIDER, WHAT**
109 **CONCERNS WOULD THE OCS HAVE?**

³ See Kennecott Application, paragraph 20.

110 A. The OCS understands that Utah Code 54-3-32 provides for numerous
111 provisions to protect other ratepayers in terms of costs and adequate notice
112 when a qualified RMP customers leaves RMP's system. If the outcome of
113 this docket is that Kennecott chooses to exit RMP's system, the OCS
114 presumes that the statutes currently in place would govern its departure.
115 However, if the outcome is a new ESA that contains provisions allowing
116 Kennecott to leave, the OCS would want to see issues and concerns such
117 as specific notice requirements of Kennecott's exit and return to RMP's
118 system addressed with more clarity than in the current ESA. In addition,
119 the OCS believes that a new ESA should also contain provisions ensuring
120 that the costs of Kennecott leaving and/or returning to the system are
121 properly calculated and assigned to them. Utah Code 54-3-32 contains
122 extensive language on costs and credits owed when an RMP customer exits
123 RMP's system, costs owed by any party including "the public utility", "the
124 eligible customer" and "other customers of the public utility". For an "eligible
125 customer" (i.e. Kennecott), the statute contemplates that these costs may
126 be determined and included as part of a customer's ESA, stating "any
127 amounts due...in accordance with a tariff or the eligible customer's contract
128 for service" (see 54-3-32 paragraph (5)(a)).

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133 **OCS Principles for Determining New Rates for Kennecott**

134 **Q. WHAT ARE SOME IMPORTANT PRINCIPLES THE OCS BELIEVES**
135 **THAT THE PSC SHOULD CONSIDER IN DETERMINING NEW RATES**
136 **FOR KENNECOTT?**

137 **A.** The OCS supports the following principles that would aid in establishing
138 new rates for Kennecott in this docket:

- 139 • RMP should have tariffs containing rate schedules and rules that
140 enable all customers to take electric service without using a special
141 contract or to fall back on when an ESA expires.
- 142 • If a customer qualifies to leave RMP's system, then:
 - 143 ○ The exit should include an agreement containing provisions that
144 protect other ratepayers from any stranded costs; and
 - 145 ○ The exit and/or return should require adequate notice to RMP to
146 ensure that RMP's system can be planned to have adequate
147 resources (ensure reliability or resource adequacy) and also to
148 not have excess resources which incur unnecessary costs.
- 149 • RMP's tariff and schedules should be reviewed and updated to clarify
150 how customers qualify for service under a specific schedule. For
151 example, Schedule 31 does not state that it is required to be used if
152 a customer has on-site generation. Schedule 31 is unclear how
153 intermittent on-site generation, such as wind or solar, affects the
154 calculation of backup power. In addition, Schedule 31 requires a

155 special contract if a customer has more than 15 MW of on-site
156 generation and there is no option for tariffed service.⁴

157 **Q. DO CIRCUMSTANCES EXIST THAT WOULD ALLOW THESE**
158 **PRINCIPLES TO BE IMPLEMENTED IN FULL FOR KENNECOTT IN**
159 **THIS INSTANCE?**

160 A. Not entirely. RMP's existing tariffed schedules would need to be updated
161 and/or clarified in order for Kenneconnott to be able to take service under them,
162 especially Schedule 31 as described above. Further, it is not clear whether
163 RMP should have been planning for Kenneconnott's load to move to a more
164 typical tariffed utility electric service. RMP response to OCS DR 1.3 has
165 confirmed that Kenneconnott's load is not included in PacifiCorp's 2023 IRP
166 forecast beyond December 31, 2025.

167 **Q. IN WHAT WAYS DO RMP'S EXISTING TARIFFED SCHEDULES NEED**
168 **TO BE UPDATED AND/OR CLARIFIED?**

169 A. It should be clear to any potential RMP customer which Schedule they
170 qualify for service under. For example, Schedule 31 does not clearly state
171 that it is required to be used if a customer has 1,000 kW or more of on-site
172 generation. As described earlier, this requirement is stated in the
173 Stipulation from Docket No. 13-035-196 but not in the tariff itself. There may
174 be other RMP Schedules that lack such clarity and should be reviewed to

⁴ See RMP Electric Service Schedule No. 31, Original Sheet No 31.1, last sentence of paragraph entitled "APPLICATION".

175 fix any omissions or to update to increase clarity. Further, as I describe
176 below, I believe that RMP needs to develop more widely available tariffed
177 demand response Schedules to take full advantage of customer's ability to
178 be interrupted, i.e. provide demand response resources, including from
179 Kennecott.

180

181 **OCS Response to Proposals by Kennecott and RMP for DSM, EBA, RBA,**
182 **Length of New Contract, Backup Power and Renewable Resource Options**
183

184 **Q. IN ITS PROPOSED AGREEMENT, KENNECOTT STATES THAT A**
185 **DEMAND RESPONSE PRODUCT COULD BE NEGOTIATED WITH RMP.**
186 **DOES THE OCS HAVE ANY CONCERNS WITH THIS APPROACH?**

187 A. Paragraph 21, subpart e. of Kennecott's Application states that it is willing
188 to provide a demand side management ("DSM") product as part of any new
189 agreement with RMP. Lines 360 to 373 of RMP testimony of Mr. Eller
190 discusses RMP's willingness to contract for such a DSM product. However,
191 the OCS has the same concerns as it did with the US Mag contract (Docket
192 No. 21-035-53) in using this approach.⁵ That is, that demand response
193 products should not simply be offered through the DSM tariffs and special
194 contracts.

⁵ See Direct Testimony of Bela Vastag, Lines 260 – 289, April 7, 2022, Docket No. 21-035-53.

195 **Q. GENERALLY SPEAKING, DOES THE OCS BELIEVE IT IS**
196 **APPROPRIATE FOR RMP TO ACQUIRE SPECIAL DEMAND-SIDE**
197 **RESOURCES INSIDE AN ESA?**

198 A. No. If any demand-side resources, such as interruptible programs, provide
199 system benefits that are passed through to other customers, it would
200 certainly be in the public interest to open such programs to any customers
201 with the characteristics to provide those benefits. The OCS supports an
202 expansion of demand response resources to the extent they are cost
203 effective and have the ability to defer other investments. At present, RMP
204 has only pursued these resources through its DSM tariff and in special
205 contracts. While its DSM programs are quite successful, participation levels
206 suggest that not all qualifying customers are aware of them. The OCS is
207 concerned that some of these provisions are developed in different
208 departments of RMP that are somewhat siloed from each other.⁶ For
209 example, it appears that the DSM programs are developed to fill needs
210 identified in the IRP while special contract provisions are included as base
211 assumptions in the IRP.

212 **Q. WHAT DO YOU RECOMMEND REGARDING KENNECOTT'S STATED**
213 **ABILITY TO PROVIDE A DSM PRODUCT?**

⁶ See OCS Comments, June 21, 2022 in Docket No. 22-035-T09.

214 A. I recommend that any such contractual terms be based on existing DSM
215 tariffs to begin to harmonize how demand response (i.e. interruptibility) is
216 valued and managed on RMP's system.

217 **Q. LINES 300 TO 301 OF MR. SANDS TESTIMONY PROPOSES THAT**
218 **KENNECOTT BE EXEMPT FROM 2026 EBA TRUE-UP CHARGES FOR**
219 **CALENDAR YEAR 2025. LINES 349 TO 351 OF MR. ELLER'S**
220 **TESTIMONY STATES THAT RMP DISAGREES WITH THIS**
221 **TREATMENT. HOW DOES THE OCS RESPOND TO THIS EBA ISSUE?**

222 A. The OCS agrees with RMP's position that if Kennecott moves to service
223 under RMP tariffed rates, they should be subject to the 2026 Energy
224 Balancing Account ("EBA") true-up. As Mr. Eller states, this is consistent
225 with how any new customer is treated when taking new service under RMP
226 tariff rates. Or, in the alternative, if a new ESA is approved for Kennecott,
227 that contract could specify that Kennecott is not subject to the 2026 EBA
228 true-up but will be responsible for its share of the EBA true up in the year
229 following the conclusion of the new contractual term.

230 **Q. LINES 354 TO 359 OF MR. ELLER'S TESTIMONY PROPOSES THAT IF**
231 **KENNECOTT MOVES TO TARIFFED RATES, THEY SHOULD NOT BE**
232 **SUBJECT TO THE 2026 RBA TRUE-UP FOR CALENDAR YEAR 2025**
233 **BECAUSE THIS WOULD PROVIDE KENNECOTT A REFUND FOR**
234 **RECS THAT KENNECOTT HAD PURCHASED. WHAT IS THE OCS'S**
235 **POSITION ON THIS RBA ISSUE?**

236 A. The OCS agrees with RMP's position that Kennecott should not be subject
237 to the 2026 REC Balancing Account ("RBA") true-up in order to avoid
238 providing Kennecott a refund for some of the RECs⁷ that they purchased
239 from RMP in 2025.

240 **Q. IF A NEW ESA IS PUT IN PLACE, KENNECOTT IS REQUESTING THAT**
241 **IT BE FOR A SIX YEAR TERM. WHAT IS YOUR RESPONSE?**

242 A. I note that RMP supports this contractual length and the OCS believes it is
243 a reasonable term for a new ESA.

244 **Q. DO RMP AND KENNECOTT'S PROPOSALS AGREE ON THE AMOUNT**
245 **OF BACKUP POWER KENNECOTT SHOULD BE BILLED FOR IF**
246 **KENNECOTT RECEIVES SERVICE UNDER SCHEDULE 31 STARTING**
247 **ON JANUARY 1, 2026?**

248 A. No, they disagree. Kennecott has recently installed 5 MW of on-site solar
249 generation and is considering expanding the facility to 30 MW. RMP
250 includes this 30 MW of projected new on-site solar generation in its proposal
251 and recommends a higher level of backup power for Kennecott. However,
252 Kennecott states: "The capacity of the solar facility does not contribute to
253 the...backup contract power Kennecott proposes in this docket because the
254 solar facility will not produce power and energy during all hours of the day."
255 (see Direct Testimony of Steven Sands Lines 356 – 358).

256 **Q. DO YOU AGREE WITH EITHER PROPOSAL ON BACKUP POWER?**

⁷ RECs are Renewable Energy Credits.

257 A. The OCS is unable to provide an opinion on the proposals for backup
258 power because it is unclear if Schedule 31 contemplated on-site
259 generation being an intermittent resource such as a solar facility and it is
260 unclear from Schedule 31 what the goal or purpose of backup power is
261 and how it applies to an intermittent or non-dispatchable generator. This
262 is another area as described earlier in my testimony where RMP tariffs
263 may need to be updated.

264 **Q. BOTH RMP AND KENNECOTT SUPPORT KENNECOTT BEING ABLE**
265 **TO TAKE ADVANTAGE OF ALL RENEWABLE RESOURCE AND**
266 **DECARBONIZATION OPTIONS AVAILABLE TO OTHER INDUSTRIAL**
267 **CUSTOMERS. DO YOU AGREE?**

268 A. Yes, I generally agree. However, I also note several issues that introduce
269 complexities that need to be addressed.

- 270 • I agree with RMP that an individualized sale of RECs from RMP to
271 an individual customer is not something available to other industrial
272 customers (as allowed under Kennecott's current ESA Non-
273 Gen/REC Agreement).
- 274 • I agree with RMP that Kennecott's request for a virtual power
275 purchase agreement option is unclear.
- 276 • Since Kennecott is proposing a new six-year ESA that specifies
277 contract and backup power, it is unclear how the procurement of
278 additional renewable resource electric service options will interact
279 with the contract. Procurement of any new on-site generation or

280 new renewable resources through Schedule 32 or 34 agreements
281 would have a direct impact on the costs of RMP to serve Kennecott
282 which could require the terms of the ESA to be adjusted or
283 updated. No party has indicated what kind of provisions would be
284 included to amend the ESA each time Kennecott planned to build
285 new on-site generation or to pursue a Schedule 32 or 34 resource
286 in a manner that protects other customers and is in the public
287 interest.

288 • RMP did propose a potential requirement for Kennecott to provide
289 notice prior to additional renewables being constructed on site or
290 acquired through Schedule 32 or 34. I agree that a notice
291 requirement would be valuable for system planning purposes and
292 suggest that RMP should consider how to incorporate it into the
293 Schedule 31 tariff to promote equitable treatment of all large
294 customers with on-site generation.

295 Finally, I do not agree with RMP's proposal that the PSC should order
296 Kennecott and RMP to negotiate in good faith on these disputed topics,
297 i.e., that such an order to negotiate is the required solution to these types
298 of disputes between RMP and customers over how a customer is to
299 receive electric service.. Negotiating an individualized solution is
300 inconsistent with the idea of taking standardized tariff rates and making
301 participation available in RMP programs to all industrial customers.

302 **Q. YOUR TESTIMONY DOES NOT RESPOND TO ALL OF KENNECOTT'S**
303 **AND RMP'S PROPOSED TERMS AND CONDITIONS. DOES THIS**
304 **MEAN THAT THE OCS AGREES WITH THOSE TERMS AND**
305 **CONDITIONS NOT DISCUSSED IN THIS TESTIMONY?**

306 A. No, issues, including contractual terms and conditions, for which I have not
307 provided the OCS's position should not be interpreted as either opposition
308 or support by the OCS. The OCS reserves the right to provide additional
309 input at such time as more specific contractual terms are known.

310

311 **Summary and Recommendations**

312 **Q. WHAT ARE THE OCS'S RECOMMENDATIONS FOR KENNECOTT?**

313 A. First, neither Kennecott's nor RMP's proposal from their direct testimonies
314 should be approved. Second, the OCS recommends that the PSC consider
315 the following in approving new rates for Kennecott:

- 316 • Since RMP's currently approved tariffs do not provide an option
317 for Kennecott to choose tariffed rates, despite [REDACTED]
318 [REDACTED] the PSC should approve a contract that
319 approximates relevant tariffed rates as closely as possible and
320 reflects cost to serve Kennecott as closely as possible.
- 321 • The PSC should evaluate to what extent RMP did and/or should
322 have planned for Kennecott remaining on its system and evaluate
323 whether new contractual terms should be adjusted from standard
324 rates to reflect potentially higher costs to serve Kennecott in the

325 early years based upon whether adequate notice for planning
326 was provided.

- 327 • The OCS supports the following terms:
- 328 ○ Kennecott should be included in the EBA true-up in 2026,
329 or, if specially provided for in a new ESA, that Kennecott
330 will be responsible for its share of the EBA true up in the
331 year following the conclusion of the new ESA's contractual
332 term.
 - 333 ○ Kennecott should not be included in the RBA true-up in
334 2026.
 - 335 ○ If Kennecott is served by RMP under a new ESA starting
336 in 2026, the OCS supports a term of 6 years.
 - 337 • If a new ESA results from this process and the contract keeps in
338 place an option for Kennecott to leave RMP's system and return
339 at some future date, the requirements for providing notice and the
340 calculation of exit/return costs should be described with more
341 clarity to protect other ratepayers.
 - 342 • If Kennecott takes service under Schedule 31, it is unclear how
343 intermittent on-site generation such as solar would impact the
344 calculation of backup power.
 - 345 • The OCS supports Kennecott having the renewable resource
346 options that are available to all other industrial customers as long
347 as RMP has sufficient notice to plan for the new resources and

348 the new resources are properly integrated into Kennecott's ESA
349 to keep costs from being transferred to other customers.

350 **Q. DOES THE OCS HAVE ANY ADDITIONAL RECOMMENDATIONS?**

351 A. Yes, in addition the OCS recommends that the PSC require RMP to update
352 its tariffs such that service is available to all customers with no or minimal
353 additional negotiations required. This could include changes to Schedule 31
354 and expansion of Demand Response Tariffs.

355 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

356 A. Yes it does.

357