

April 19, 2024

VIA ELECTRONIC FILING

Utah Public Service Commission
Heber M. Wells Building, 4th 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 Rebuttal 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 Rebuttal Testimony of Craig M. Eller in the above referenced matter.

Confidential testimony and exhibit have 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,



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

REDACTED

Rocky Mountain Power

Docket No. 23-035-51

Witness: Craig M. Eller

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

REDACTED

Rebuttal Testimony of Craig M. Eller

April 2024

1 **Q. Are you the same Craig M. Eller who previously provided direct testimony in this**
2 **docket on behalf of PacifiCorp, d/b/a Rocky Mountain Power (“RMP” or the**
3 **“Company”)?**

4 A. Yes.

5 **I. PURPOSE OF TESTIMONY**

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

7 A. My testimony responds to the testimony provided by the Division of Public Utilities
8 (“Division”) and the Office of Consumer Services (“Office”) regarding Kennecott Utah
9 Copper, LLC’s (“Kennecott”) November 13, 2023, Application for an Order
10 Determining the Rates, Terms, and Conditions of Electric Service by Rocky Mountain
11 Power to Kennecott (“Application”), and the testimony supporting that Application.

12 **II. SUMMARY OF DIVISION TESTIMONY AND RESPONSE**

13 **Q. Please summarize the Division’s position regarding Kennecott’s Application.**

14 A. In his direct testimony, Division witness Jeffrey S. Einfeldt recognizes that neither the
15 Division or the Public Service Commission of Utah (“Commission”) are in a position
16 to negotiate contract terms on the parties’ behalf, and that RMP’s existing tariff
17 schedules are ill-suited to Kennecott’s unique characteristics.¹ As such, the Division
18 asserts that renewing or extending the current Energy Services Agreement (“ESA”), or
19 converting Kennecott to service under a current tariff rate are likely not in the public
20 interest.² Therefore, a special contract that contains certain guidelines is the appropriate

¹ Docket No. 23-035-51, Ex. No. DPU 1.0, Direct Test. of Jeffrey S. Einfeldt, at 3.

² *Id.*

21 mechanism to establish rates for Kennecott that are just, reasonable, and in the public
22 interest.³

23 **Q. Why does the Division conclude that converting Kennecott to Schedule 31 rates is**
24 **likely not in the public interest?**

25 A. The Division explains that Schedule 31 does not account for Kennecott's unique load
26 characteristics.⁴ Further, the Division recognizes that, in the time since the existing ESA
27 was negotiated and the Schedule 31 tariff rates were set, both the power industry and
28 Kennecott's energy needs have significantly changed.⁵ Permitting Kennecott to take
29 advantage of Schedule 31 rates would likely result in shifting costs to other RMP
30 customers.⁶ In other words, converting Kennecott to Schedule 31 rates is not in the
31 public interest because other ratepayers would likely have to pay for unused resources
32 and stranded costs due to Kennecott's load changes and variability.⁷

33 **Q. How does the Company respond?**

34 A. The Company agrees with the Division. Kennecott appears to ask the Commission to
35 establish rates without confirming that Kennecott will be responsible for its costs of
36 service, and without necessary customer protections to ensure that the rates it requests
37 would not result in other customers subsidizing Kennecott's service, or otherwise harm
38 other RMP customers. Any terms regarding Kennecott's return to service should ensure
39 adequate price protections for other RMP customers.

³ *Id.* at 3–4.

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 4–5.

40 **Q. What is the Division's position regarding special contracts?**

41 A. The Division recognizes that a special contract is warranted when an RMP customer
42 has unique load characteristics like Kennecott.⁸ The Division recommends that special
43 contracts account for the costs associated with serving unique customers so that other
44 customers are not harmed by service under these special contracts.⁹ Further, the
45 Division recommends that special contracts contain sufficient notice requirements
46 regarding changes in the customer's unique load requirements or operations.¹⁰

47 **Q. How does the Company respond?**

48 A. Again, the Company agrees with the Division. When establishing rates for a customer
49 with highly unique characteristics such as Kennecott, special contracts are the proper
50 and most effective mechanism to account for that unique customer's load profile and
51 to establish rates that are just, reasonable, and in the public interest.

52 **Q. What does the Division recommend regarding Kennecott's application?**

53 A. The Division recommends that, rather than establishing Kennecott's rates as Kennecott
54 requests, the parties should execute a special contract that results in rates for Kennecott
55 that are just, reasonable, and in the public interest.¹¹

56 **Q. How does the Company respond?**

57 A. The Company agrees with the Division.

58 **III. SUMMARY OF OFFICE TESTIMONY AND RESPONSE**

59 **Q. Please summarize the Office's position regarding Kennecott's Application.**

60 A. In the direct testimony of Bela Vastag, the Office takes the position that: (1) it is

⁸ *Id.* at 3.

⁹ *Id.* at 4, 6.

¹⁰ *Id.*

¹¹ *Id.* at 6.

61 unclear how Kennecott’s procurement of new renewable energy resources through
62 Schedules 32 or 34 would impact RMP’s costs of service to Kennecott; (2) the current
63 ESA agreement is ambiguous regarding its notice requirements; and (3) instead of
64 utilizing special contracts, the Company should be required to develop a tariff schedule
65 that would be available to serve all customers, including idiosyncratic customers like
66 Kennecott.¹²

67 I discuss and respond to each of these positions below.

68 **Q. Please explain the Office’s position regarding Kennecott’s procurement of**
69 **renewable energy resources through Schedule 32 and 34.**

70 A. As an initial matter, the Office agrees with RMP that individual agreements to purchase
71 RMP’s system-generated renewable energy certificates (“RECs”) are not available to
72 other commercial or industrial customers.¹³ While participation in Schedule 32 or 34 is
73 available to large industrial customers, it is unclear to the Office how the addition of
74 renewable resource options through those Schedules would interact with Kennecott’s
75 proposed contract terms.¹⁴ Because each addition of resources would impact RMP’s
76 costs, an adjustment to the contract would be required every time Kennecott utilized
77 Schedule 32 or 34.¹⁵ The Office agrees with the Company that any addition of
78 renewable resources should come with sufficient notice for RMP’s planning purposes,
79 and to ensure that Kennecott is not given special treatment over other industrial

¹² Docket No. 23-035-51, Direct Test. of Bela Vastag, at 3–5, 7, 13–14.

¹³ *Id.* at 13.

¹⁴ *Id.* at 13–14.

¹⁵ *Id.*

80 customers, and that Kennecott is paying appropriate rates for service provided to it by
81 the Company.¹⁶

82 **Q. How does the Company respond?**

83 A. The Company agrees that Kennecott's lack of clarity regarding its commitment to take
84 service from the Company, as well as the uncertainty regarding how Kennecott will
85 utilize Schedules 32 or 34, increases the risk of shifting costs to other RMP customers.
86 What is clear is that Kennecott should be required to pay rates that cover its costs for
87 returning to service and that avoids harm to other customers.

88 **Q. Please explain the ambiguities the Office maintains exist in the current ESA
89 agreement.**

90 A. The Office asserts that the notice requirements under the current ESA are ambiguous
91 and, therefore, there is a lack of clarity as to whether Kennecott gave RMP adequate
92 notice regarding future service.¹⁷

93 **Q. What is the Company's response?**

94 A. The Company disagrees. There is no ambiguity in the current ESA regarding
95 Kennecott's return-to-service notice requirements. Under the terms of the ESA,
96 Kennecott was clearly required to provide notice of its intent to continue service from
97 RMP no later than December 31, 2022. Kennecott gave no such notice. Rather, to date,
98 the only formal notice Kennecott has given to the Company is Kennecott's written
99 notice of intent to transfer service to a nonutility energy supplier pursuant to
100 §54-3-32(3)(A)(i) of the Utah Code.

¹⁶ *Id.*

¹⁷ *Id.* at 4–5, 6.

101 Moreover, Kennecott has repeatedly provided RMP with monthly forecasts
102 indicating Kennecott’s intention to leave RMP’s system. Kennecott’s latest forecast,
103 like each of those that preceded it, clearly delineates load under the ESA as being

104 [REDACTED]

105 [REDACTED]

106 [REDACTED]

107 [REDACTED]

108 [REDACTED]

109 [REDACTED]

110 [REDACTED]

111 [REDACTED]

112 [REDACTED]

113 [REDACTED]

114 [REDACTED]

115 [REDACTED]

116 There is no ambiguity regarding Kennecott’s notice. Kennecott has clearly indicated its
117 intent to leave RMP’s system, and its Application and supporting testimony in this
118 docket has reaffirmed Kennecott’s lack of commitment. Indeed, in both the Application
119 and testimony, Kennecott states that it will only return to the system if it is provided
120 with rates that it wants.²⁰

¹⁸ See Confidential Exhibit __ (CME-1R).

¹⁹ *Id.*

²⁰ Application at ¶¶ 19, 21,22; Docket No. 23-035-51, Confidential Direct Test. of Stephen Sands, at 2.

121 In contrast to the Office’s characterization, Kennecott’s notices and testimony
122 make clear that Kennecott has not committed to taking service from the Company and
123 that it will only come back to RMP’s system if the price is right. And there is no
124 ambiguity that Kennecott will not return to RMP service if it cannot receive preferential
125 rates. Accordingly, it is unreasonable to expect the Company to adjust its system to
126 include Kennecott’s significant load in Rocky Mountain Power’s long-term plans
127 without a clear commitment from Kennecott to do so. This is particularly the case given
128 the plain language of the ESA’s relevant terms, all of Kennecott’s prior formal notices,
129 and all other communications from Kennecott that have made clear Kennecott would
130 only seek services from Rocky Mountain Power if it could do so under favorable
131 terms—terms which have never materialized.

132 **Q. Please explain the Office’s assertion that the Company should have to develop**
133 **tariff schedules to provide service to any customer, regardless of that customer’s**
134 **load characteristics or specific needs?**

135 A. The Office recognizes that Kennecott is not eligible to receive tariffed electric service
136 under any current tariff schedule, including Schedule 31.²¹ Nonetheless, the Office
137 asserts that a tariff schedule should always be available for any potential RMP customer
138 and that no customer should have to rely on a special contract.²² Accordingly, the Office
139 recommends that RMP should review and update its tariffs so that any RMP customer
140 would qualify under a tariff schedule with minimal negotiations, no matter how unique
141 or idiosyncratic the customer’s energy needs.²³

²¹ Vastag Test., at 2.

²² *Id.* at 3–4.

²³ *Id.* at 7, 8–9, 17.

142 **Q. How does the Company respond?**

143 A. The Company disagrees. First, it is impractical and unrealistic for the Office to expect
144 that RMP can anticipate and develop a tariff schedule for every possible customer.
145 There are unique circumstances where a special contract is warranted, and in fact can
146 be the best way in unique circumstances to provide service while protecting other
147 customers. It is simply impossible for the Company to be able to develop tariff
148 schedules for every circumstance, while at the same time ensuring that the tariff rates
149 properly allocate cost recovery to the various customer classes. As a result, if the
150 Company was required to try to develop a tariff schedule for every customer, that
151 requirement would either inherently result in intra-class subsidizations, or merely result
152 in special tariffs for every customer with a unique load profile.

153 Further, the Company notes that the Office has historically opposed the creation
154 of a special tariff rate for customers with unique energy profiles. For example, in
155 Docket No. 19-035-T06 (the “Schedule 22 Application”), RMP proposed a new tariff
156 schedule for indoor agricultural lighting customers in response to an existing RMP
157 customer that sought to expand its business.²⁴ In response, the Office provided
158 testimony expressing concern that “creating a special tariff rate based on a single
159 customer’s characteristics could lead to additional customers claiming a unique load
160 profile or circumstance that should allow the development of a new, tailored rate
161 schedule for them.”²⁵

²⁴ *In re Rocky Mountain Power Indoor Agricultural Lighting Tariff, Electric Service Schedule 22*, Docket No. 19-035-T06, Appl. at 2–4 (Apr. 4, 2019)

²⁵ *Comments from the Office of Consumer Services*, Docket No. 19-035-T06, June 6, 2019, at 3; *see also Order Approving Tariff*, Docket No. 19-035-T06, July 10, 2019, at 4–5.

162 The Office now requests that RMP do the opposite: RMP should create a special
163 tariff rate based on Kennecott’s unique characteristics. In the Schedule 22 Application,
164 the Office recommended that “[f]or any future special tariff request based on a specific
165 customer, the Company should provide justification as to the reasonableness and need
166 for the tariff and demonstrate it will not result in cost shifting to other customers.”²⁶

167 But there is no realistic way for RMP to adequately meet these showings
168 because it cannot anticipate every possible unique load profile and whether or if any
169 other potential customer would be eligible for the same tariff as the unique customer.
170 Moreover, the Company cannot, in advance, anticipate a unique customer’s load and
171 ensure that rates in a tariff schedule will not result in cost shifting to other customers.
172 Kennecott is among the most unique energy users in the state of Utah, so it is unlikely
173 that a tariff created to cover Kennecott’s unique characteristics would also cover other
174 customers. Moreover, without a clear understanding of Kennecott’s needs and load
175 going forward, it is impossible for the Company to develop a tariff that will ensure that
176 the rates paid by Kennecott will not result in cost shifting to other customers.

177 Negotiating a special contract for idiosyncratic customers like Kennecott is a
178 more realistic, efficient, and effective mechanism to establish rates that are just,
179 reasonable, and in the public interest.

180 **Q. Are there other concerns the Company identifies in the Office’s testimony?**

181 A. Yes. The Office’s testimony appears to overlook the procedural posture of this docket,
182 and the lack of evidence provided by Kennecott. As the applicant, Kennecott has the
183 burden of demonstrating that the rates it proposes to receive service under are

²⁶ *Comments from OCS* at 3.

184 appropriate for its characteristics, and will not result in unjust or unreasonable rates.
185 Yet Kennecott has provided no such evidence. It has not demonstrated that, if it
186 received service under Schedule 31, it would be paying its full cost of service. Nor has
187 Kennecott provided any evidence showing what rates would be just, reasonable, and in
188 the public interest. Finally, Kennecott has not established that the service terms
189 proposed by the Company in the parties' negotiations would be unfair or unjust for
190 Kennecott. In the face of this lack of evidence supporting the Application, a special
191 contract is the only means to properly address Kennecott's request for service (whether
192 temporary or long-term). The Company should not be required, in the abstract, to
193 develop a potential tariff to provide service to Kennecott where there is no way to be
194 certain that the tariff is in fact appropriate for Kennecott's inexact needs and that it will
195 protect other customers.

196 IV. CONCLUSION

197 **Q. Please summarize your recommendation to the Commission.**

198 A. Special contracts are a necessary and realistic mechanism to establish rates for
199 customers with unique characteristics such as Kennecott. I recommend the
200 Commission reject Kennecott's application and order the parties to negotiate in good
201 faith per the terms of the ESA regarding rates and terms of ongoing service.

202 **Q. Does this conclude your rebuttal testimony?**

203 A. Yes.

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Rocky Mountain Power
Exhibit RMP___(CME-1R)
Docket No. 23-035-51
Witness: Craig M. Eller

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

REDACTED

Exhibit Accompanying Rebuttal Testimony of Craig M. Eller

Kennecott Electricity Forecast

April 2024

**THIS EXHIBIT IS CONFIDENTIAL IN
ITS ENTIRETY AND IS PROVIDED
UNDER SEPARATE COVER**

CERTIFICATE OF SERVICE

Docket No. 23-035-51

I hereby certify that on April 19, 2024, a true and correct copy of the foregoing was served by electronic mail to the following:

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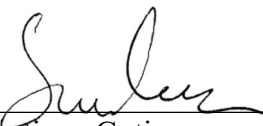
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