

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Stephen Sands. My business address is 4700 Daybreak Parkway, South
4 Jordan, Utah, 84009.

5 **Q. By whom are you employed and what is your position?**

6 A. I am employed by Kennecott Utah Copper LLC (“Kennecott”), where I have worked for
7 more than 18 years. My current title is Manager – Energy Strategy, a title I have held since
8 2019. My current duties and responsibilities include coordination with commercial teams
9 on energy supply, including diesel fuel, natural gas, and electricity; and leading strategic
10 decarbonization efforts at Kennecott. Over the years, I have held various titles, including
11 Director of Business Transformation, Director of External Affairs, and Director of Energy
12 Programs.

13 **Q. Are you the same Stephen Sands who previously submitted direct testimony in this
14 proceeding on behalf of Kennecott?**

15 A. Yes.

16 **Q. What is the purpose of your rebuttal testimony?**

17 A. My rebuttal testimony responds to the direct testimony filed by Rocky Mountain Power
18 (“RMP”) witness Craig Eller, by the Division of Public Utilities (“DPU”) witness Jeffrey
19 S. Einfelt, and by the Office of Consumer Services (“OCS”) witness Bela Vastag.

20 Kevin Higgins of Energy Strategies, LLC has also submitted rebuttal testimony on
21 behalf of Kennecott to address some technical aspects in response to testimony submitted
22 by others in this docket. My testimony focuses on the high-level concepts at issue in this
23 docket.

24 **Q. Please summarize your conclusions and recommendations in your rebuttal**
25 **testimony?**

26 A. I continue to recommend that this Commission direct the parties to submit a contract for
27 Commission approval that provides for electric service from RMP to Kennecott at the rates,
28 terms, and conditions of Schedule 31.

29 I also propose an alternative recommendation only to the extent that this
30 Commission determines that it must address RMP's assertion that service to Kennecott will
31 result in incremental market purchases. As noted in my testimony below, RMP has not
32 conducted any analysis or performed any studies to quantify the market purchases it claims
33 it must acquire to serve Kennecott that it would not otherwise acquire. Nonetheless, if this
34 Commission determines that it must address this risk, then Kennecott proposes as an
35 alternative to its primary recommendation that the Commission direct the parties to submit
36 for approval a contract that extends the rate-related terms in the current ESA for a period
37 of three years after the Commission's ruling in this docket that then transitions to a contract
38 based on Schedule 31 thereafter.

39 **Q. Please summarize RMP's recommendations and proposals as set forth in Mr. Eller's**
40 **testimony.**

41 A. RMP offers two recommendations to the Commission. It offers a primary recommendation
42 and, in the event the Commission does not adopt that recommendation, RMP offers a
43 secondary recommendation.

44 RMP's primary recommendation is that the Commission decline to adopt
45 Kennecott's proposal in this docket and, instead, direct the parties to negotiate in good faith
46 for a new electric service agreement starting January 1, 2026 without issuing any guidance

47 as to what rates, terms, and conditions of service the Commission would deem to be just
48 and reasonable.¹

49 RMP's secondary recommendation is that, if the Commission is inclined to issue
50 an order directing that certain rates, terms, and conditions of service apply to RMP's
51 service to Kennecott, that the Commission decline Kennecott's request for tariff-based
52 rates and, instead, direct the parties to enter an agreement utilizing rates, terms, and
53 conditions suggested by RMP.

54 I will address and provide my response to each of these two recommendations in
55 detail below.

56 **II. RESPONSE TO RMP'S PRIMARY RECOMMENDATION**

57 **Q. How do you respond to RMP's primary recommendation that the Commission**
58 **decline to issue any order regarding rates, terms, and conditions and that it instead**
59 **order the parties to negotiate in good faith?**

60 A. The Commission should reject RMP's primary recommendation that the parties continue
61 to negotiate without any guidance from the Commission on appropriate rates, terms and
62 conditions of service. The parties spent nearly a year prior to the filing of this docket in
63 discussions for a new contract and could not reach agreement. Kennecott engaged in those
64 negotiations in good faith and Mr. Eller does not contend otherwise. Unfortunately, those
65 efforts did not result in an agreement between the parties. There is no reason to believe
66 that further discussions without any guidance from the Commission on appropriate rates,
67 terms, and conditions of service would result in a different outcome. Indeed, the very

¹ See Direct Testimony of Craig Eller (RMP) at lines 253-257.

68 different proposals submitted by Kennecott and RMP in this docket illustrate just how far
69 apart the parties are in their views of what rates, terms, and conditions are appropriate.

70 **Q. Has Kennecott negotiated in good faith with RMP in an effort to reach agreement on**
71 **a new electric service agreement?**

72 A. Yes. At multiple points throughout his direct testimony, Mr. Eller requests that the
73 Commission direct the parties to meet and negotiate terms in “good faith.”² To the extent
74 that Mr. Eller is suggesting that Kennecott’s negotiations with RMP were not conducted in
75 good faith, I reject that suggestion. Kennecott has already engaged in negotiations with
76 RMP in good faith and these efforts did not result in an agreement between the parties.

77 **Q. What does RMP claim is the basis for its primary recommendation?**

78 A. RMP asserts that it has no obligation to serve Kennecott after the current ESA terminates
79 on December 31, 2025³ and that, therefore, RMP should determine the terms of service to
80 Kennecott without any guidance from the Commission regarding what terms would be just
81 and reasonable. Essentially, RMP’s position is that—with respect to Kennecott—it is not
82 a public utility with any obligation to serve and that it can demand any rates, terms, and
83 conditions it sees fit and that Kennecott can either accept those terms or seek electric
84 service from another provider.

85 **Q. Do you agree that RMP has no obligation to serve Kennecott after the current ESA**
86 **terminates at the end of 2025?**

87 A. No. I am not a lawyer, but I understand that an electric utility generally has an obligation
88 to serve all customers within its service area. That obligation is generally coupled with the

² See *id.* at lines 253-257, 434-437.

³ See *id.* at lines 124-270.

89 utility having the right to serve all customers in that service area to the exclusion of all
90 other utilities or service providers. A utility’s service obligations are set forth in statute,
91 including in Utah Code⁴ § 54-3-1, which states that “[e]very public utility shall furnish,
92 provide and maintain such service . . . as will promote the safety, health, comfort and
93 convenience of its patrons, employees and the public, and as will be in all respects
94 adequate, efficient, just and reasonable.” That same statute further states that “[a]ll charges
95 made, demanded or received by any public utility . . . shall be just and reasonable,” and
96 that “[e]very unjust or unreasonable charge made or demanded . . . is hereby prohibited
97 and declared unlawful.” It is my understanding that RMP is a public utility and is bound
98 by these requirements.

99 In Utah Code § 54-3-32 the Utah Legislature created conditions that, if met, RMP
100 would no longer be obligated to serve Kennecott. Specifically, it states that RMP “is not
101 required to furnish or provide electric service to an eligible customer if the eligible
102 customer has transferred service to a nonutility energy supplier in accordance with this
103 section.”⁵ The statute then creates certain conditions precedent that must occur before
104 service to Kennecott may be transferred from RMP to a nonutility energy supplier.⁶
105 Pursuant to the statute, RMP remains obligated to provide electric service to Kennecott
106 until these conditions are met. Those conditions have not been satisfied and may not be
107 satisfied before January 1, 2026.

⁴ Utah Code § 54-3-1.

⁵ Utah Code § 54-4-32(2).

⁶ That obligation to serve is not terminated permanently, however. If a customer that receives service from a nonutility energy supplier gives notice that it intends to return as a customer of the utility, the utility must again provide service to the customer within three years after that notice. *See* Utah Code § 54-3-32(10).

108 RMP appears to assert that its statutory right and obligation to serve Kennecott is
109 waived in Sections [REDACTED] of the ESA. Specifically, RMP asserts that because
110 Kennecott [REDACTED]
111 [REDACTED] It is unclear
112 whether a utility's legal obligation to serve or its right to be the exclusive service provider
113 can be waived by contract. This issue is especially unclear in this case because the Utah
114 Legislature has identified the conditions pursuant to which RMP would no longer have the
115 right and obligation to serve and those conditions do not include a contractual waiver and
116 have not been met. If RMP can by contract waive its obligation to serve Kennecott when
117 the statutory requirements of Utah Code § 54-3-32 have not been met, then Kennecott could
118 receive service from a nonutility energy supplier without first satisfying those
119 requirements, which only apply to a customer that seeks to transfer service from RMP to a
120 nonutility energy provider. The ratepayer protections in the statute do not apply when the
121 customer no longer receives power from RMP. It is unclear whether a contractual
122 arrangement could be used to sidestep the requirements of Utah Code § 54-3-32 in this
123 way.

124 If this Commission were to adopt the Company's primary recommendation, it
125 would first have to determine that RMP may by contract (i) waive its general obligation
126 under Utah Code § 54-3-1 to provide electric service in its service area and/or (ii) waive
127 the specific requirements of Utah Code § 54-3-32 that set the conditions in which RMP is
128 no longer obligated to serve Kennecott. It is unclear that RMP may waive these obligations
129 and requirements by contract. RMP has not submitted legal argument to address the
130 question of whether its right and obligation to provide service to customers can be waived

131 by contract, and I am not in a position to address that issue. To the extent the Commission
132 desires to address this issue, I suggest that the Commission direct that the parties provide
133 legal briefing on the issue.

134 **Q. Does the Commission have to resolve this legal issue before it can issue a ruling in this**
135 **docket?**

136 A. No. Utah law grants to the Commission broad authority “to supervise and regulate” the
137 Company and to “supervise all of the business” of the Company “and to do all things . . .
138 which are necessary or convenient in the exercise of such power and jurisdiction.” Utah
139 Code § 54-4-1. This broad grant of authority permits the Commission to direct RMP to
140 provide electric service to Kennecott notwithstanding any contractual arrangements
141 between the parties. In other words, the Commission can determine that RMP must provide
142 service to Kennecott after December 31, 2025 *even if* RMP could by contract waive its
143 obligation to provide service to Kennecott beyond that point—so long as RMP service to
144 Kennecott beyond December 31, 2025 is in the public interest.

145 Moreover, RMP has asserted in this docket that it “welcomes the opportunity to
146 continue being Kennecott’s electric service provider” beyond December 31, 2025.⁷

⁷ Direct Testimony of Craig Eller (RMP) at lines 260-261.

147 **Q. RMP asserts that if the Commission were to deny RMP’s primary recommendation**
148 **in this docket, it would create a “dangerous precedent that customers may abuse the**
149 **rights afforded in Utah Code § 54-3-32.”⁸ Do you agree?**

150 A. No. Kennecott is the only RMP customer to which Utah Code § 54-3-32 could apply.⁹ As
151 such, the Commission’s ruling in this docket will not create any precedent with respect to
152 Utah Code § 54-3-32.

153 **Q. Is service to Kennecott beyond December 31, 2025 in the public interest?**

154 A. Yes. As noted in my direct testimony, the parties to Docket No. 16-035-33, the docket in
155 which the current ESA was approved (“2016 Docket”), agreed—and the Commission
156 found—that RMP’s continued service to Kennecott was in the public interest. As RMP
157 noted in the 2016 Docket, “Kennecott has consistently contributed to the Company’s fixed
158 costs at levels approved by the Commission.”¹⁰ RMP estimated that Kennecott’s
159 contribution to RMP fixed costs from 2005 through 2015 were approximately [REDACTED]
160 [REDACTED].¹¹ RMP further testified in that docket that the ESA would result in a
161 “contribution to Company fixed costs [that] remains at a level that is consistent or slightly
162 higher than the average of the previous contracts.”¹² Kennecott has long provided
163 significant contributions to RMP’s fixed costs. Continued service to Kennecott at rates
164 that allow RMP to recover Kennecott’s cost of service ensures that Kennecott continues to
165 make significant contributions to RMP’s fixed costs, which will reduce the share of fixed
166 costs attributed to other ratepayers.

⁸ *Id.* at lines 265-270.

⁹ *See* Exhibit 2.1 (RMP Response to KUC Data Requests 1.6).

¹⁰ *See* Exhibit 2.2 (Docket No. 16-035-33, Direct Testimony of Paul Clements (RMP) at lines 32-34).

¹¹ *See* CONFIDENTIAL Exhibit 2.2 (Docket No. 16-035-33, Direct Testimony of Paul Clements at line 164).

¹² *Id.* at lines 402-407.

167 **Q. Why do you believe it is necessary for the Commission to issue an order determining**
168 **the rates, terms, and conditions of service to Kennecott?**

169 A. As noted above, Kennecott and RMP negotiated for approximately a year without guidance
170 from the Commission on this issue and weren't able to reach an agreement. The parties
171 were unable to reach agreement in part because the ESA, RMP's existing tariffs, and
172 existing Utah law provide no guidance regarding service to Kennecott after the expiration
173 of the current term of the ESA. I do not believe the parties will be able to reach an
174 agreement if the Commission declines to provide any guidance to the parties on the rates,
175 terms, and conditions of service. Kennecott filed this docket because negotiations with
176 RMP were not successful and because Commission guidance is necessary for the parties to
177 reach an agreement.

178 **Q. Please explain why you say that the ESA and RMP's existing tariffs provide no**
179 **guidance regarding service to Kennecott.**

180 A. First, all parties to this docket agree that there is no existing RMP tariff that applies to
181 Kennecott. Schedule 31 comes closest because it contains terms to address onsite
182 generation resources for large industrial customers like Kennecott. By its own terms,
183 though, Schedule 31 is not available to customers with onsite generation greater than 15
184 MW. It states that "[p]artial requirements service from the Company for customers with
185 more than 15,000 kW of on-site generation shall be provided under contractual
186 arrangements to be negotiated on a case-by-case basis."¹³ Schedule 31 provides no
187 guidance as to what these "contractual arrangements" should be. As discussed further

¹³ Exhibit 2.3 (Schedule 31) at Original Sheet No. 31.1

188 below, there is no particular reason that the rates, terms, and conditions of Schedule 31
189 can't form the basis of a special contract between RMP and Kennecott, but the limitations
190 to application in Schedule 31 requires that the parties enter into a contract. As such, there
191 is no RMP tariff that applies to Kennecott. It is appropriate for the Commission to set the
192 rates, terms, and conditions of service for Kennecott, just as it is appropriate for the
193 Commission to do so for any class of customers.

194 Second, the ESA similarly provides no guidance to the parties. Section 2.04 states
195 that, [REDACTED]
196 [REDACTED]

197 [REDACTED] As just discussed, there is no [REDACTED]
198 [REDACTED] that applies to Kennecott. Therefore, the only rate that would have applied to
199 Kennecott under Section 2.04 are [REDACTED]

200 [REDACTED] In late 2022, Kennecott reached out to RMP to discuss cost of service rates
201 that would apply to service to Kennecott beyond 2025, but even after nearly a year of
202 negotiations the parties did not reach agreement on rates.

203 Third, existing Utah law also provides inadequate guidance. Utah law seeks to
204 ensure that when customers must negotiate with RMP, as Kennecott must here, RMP may
205 not make unjust or unreasonable demands of such customers or subject them to undue
206 discrimination.¹⁵ These legal requirements have proven to provide insufficient guidance
207 to the parties in this docket.

¹⁴ CONFIDENTIAL Exhibit 2.4 (ESA § 2.04).

¹⁵ See, e.g., Utah Code § 54-3-1 (“All charges made, demanded or received by any public utility . . . shall be just and reasonable” and “[e]very unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.”); Utah Code § 53-3-8 ([a] public utility may not (a) as to rates, charges, service facilities or in any other respect, make or grant any preference or advantage to any person, or

208 Q. RMP criticizes Kennecott for [REDACTED] [REDACTED]

209 [REDACTED] How do you respond?

210 A. RMP's submissions in this docket emphasize Kennecott's decision not to [REDACTED]
211 [REDACTED] but fail to provide the relevant context
212 for that decision.

213 Section 2.04 states that [REDACTED]
214 [REDACTED]
215 [REDACTED]
216 [REDACTED]

217 Section 2.04 further states that [REDACTED]
218 [REDACTED]
219 [REDACTED]
220 [REDACTED]
221 [REDACTED]

222 Any customer in Kennecott's position would need to know what electric rates
223 would apply going forward before it could elect early termination under these
224 circumstances. As noted above, however, neither the ESA, nor RMP's tariffs, nor existing
225 Utah law provide any guidance on what rates would apply. There is no [REDACTED]
226 [REDACTED] that applies to Kennecott.¹⁷ Kennecott engaged in discussions with RMP
227 to determine if the parties could reach agreement on rates. As noted above, Kennecott

subject any person to any prejudice or disadvantage; and (b) establish or maintain any unreasonable difference as to rates, charges, services or facilities, or in any other respect, either as between localities or as between classes of service.”)

¹⁶ CONFIDENTIAL Exhibit 2.4 (ESA § 2.04).

¹⁷ *Id.*

228 requested that RMP perform a cost-of-service analysis as discussed above. Kennecott
229 continued to engage in lengthy negotiations with RMP for much of 2023 in the hopes that
230 an agreement could be reached, but those efforts were unsuccessful.

231 Kennecott did not [REDACTED] because it did
232 not know and could not know the rates, terms, and conditions of service that would apply
233 to Kennecott starting January 1, 2026 [REDACTED]. Kennecott still lacks
234 this necessary information. RMP’s position in this docket—asking the Commission to
235 simply send the parties back to the negotiating table with no guidance on rates, terms, or
236 conditions of service—would ensure that Kennecott remains in the dark about how to make
237 that decision.

238 If the Commission were to grant RMP’s primary recommendation and direct the
239 parties to negotiate without any guidance on appropriate rates, the parties will be left in the
240 same position they have been in since late 2022—a position that has not resulted in an
241 agreement. The Commission should reject RMP’s primary recommendation.

242 **Q. How do other parties in this docket respond to RMP’s primary recommendation?**

243 A. On behalf of the OCS, Mr. Vastag testifies that the Office does not agree with RMP’s
244 primary recommendation and asserts that the Commission should not simply order the
245 parties to negotiate. In support of this position, Mr. Vastag testifies, “[n]egotiating an
246 individualized solution is inconsistent with the idea of taking standardized tariff rates and
247 making participation available in RMP programs to all industrial customers.”¹⁸

¹⁸ See Direct Testimony of Bela Vastag (OCS) at lines 295-301.

248 **Q. How do you respond to Mr. Vastag’s testimony on this point?**

249 A. I agree with his recommendation that the Commission decline to adopt RMP’s primary
250 recommendation. Kennecott has negotiated with RMP in good faith and those efforts have
251 not been successful. There is no set of tariff rates that expressly apply to Kennecott.
252 Perhaps it is possible for the Commission to create a standardized solution to a customer
253 like Kennecott, but in the absence of such a standardized solution, the Commission should
254 provide guidance as to what rates, terms, and conditions are just and reasonable.

255 **III. RESPONSE TO RMP’S SECONDARY RECOMMENDATION**

256 **Q. Please summarize RMP’s secondary recommendation.**

257 A. In its secondary recommendation, RMP asserts that the Commission should decline to grant
258 Kennecott’s request for a contract containing rates, terms, and conditions based on
259 Schedule 31. Instead, RMP proposes that the Commission direct the parties to negotiate
260 an agreement based on the following rates, terms, and conditions:

- 261 • That for a period of six years following the date Kennecott withdraws its notice of
262 intent to receive service from a nonutility energy supplier pursuant to Utah Code §
263 54-3-32, all “energy” provided to Kennecott by RMP be billed at the *higher of*
264 either (i) Schedule 9 Energy charges, or (ii) a real-time energy cost established by
265 the Commission;¹⁹
- 266 • That Kennecott be subject to backup demand charges based on the structure of
267 Schedule 31, but that these charges be set in a future rate proceeding;²⁰

¹⁹ See Direct Testimony of Craig Eller (RMP) at lines 567-571.

²⁰ See *id.* at lines 572-577.

- 268 • That the Backup Contract Power be required to match the nameplate capacity of
269 Kennecott’s onsite generation resources and the Supplementary Contract Power be
270 set to match the Total Contract Power, less the Backup Contract Power;²¹
- 271 • That Kennecott be required to provide notice six years in advance of installing any
272 additional onsite generation resource(s);²²
- 273 • That the parties file updated backup demand rates in the event the capacity of onsite
274 generation resources changes;²³
- 275 • That Kennecott be required to provide notice six years in advance of participating
276 in Schedule 32 or Schedule 34;²⁴
- 277 • That Kennecott be subject to EBA surcharges starting in 2026;²⁵ and
- 278 • That Kennecott not be eligible to receive RBA sur-credits through December 31,
279 2026.²⁶

280 I respond to RMP’s recommendations below. Mr. Higgins also separately addresses
281 portions of RMP’s recommendations regarding the energy and demand charges, the
282 appropriate level of backup contract charges, and the propriety of applying Schedule 31
283 rate structures to Kennecott.

²¹ *Id.* at lines 325-328 & 576-577.

²² *Id.* at 578-580.

²³ *Id.* at 581-583.

²⁴ *Id.* at 584-586.

²⁵ *Id.* at 587-588.

²⁶ *Id.* at 589-591.

284 A. **Response to RMP Proposed Rates of Service (General)**

285 **Q. What do you understand to be the basis for RMP’s proposal in this docket?**

286 A. RMP’s general assertion in this docket is that it has not planned to serve Kennecott in 2026
287 or thereafter and that, as a result, providing service to Kennecott in 2026 and for some
288 period of time thereafter would increase the risk of incremental market purchases as
289 compared to a scenario in which RMP does not serve Kennecott in 2026.²⁷ RMP asserts
290 that Kennecott should pay the costs associated with those incremental market purchases.

291 In his rebuttal testimony, Kevin Higgins addresses whether RMP’s secondary
292 proposal is just and reasonable.

293 **Q. Does RMP provide any study results or offer any analytical support for any portion**
294 **of its secondary proposal?**

295 A. No. RMP provides no analytical support for any of its proposals. For example, while RMP
296 claims that serving Kennecott increases the risk of incremental market purchases to serve
297 customers, RMP has not conducted any studies or provided any modeling results that
298 quantify that risk or to project the cost of any incremental market purchases that RMP
299 asserts is required.²⁸ As such, there is no data in this docket upon which this Commission
300 can conclude that service to Kennecott in 2026 and beyond is projected to result in
301 additional market purchases or, more broadly, an increase in net power costs.

302 Similarly, RMP’s proposal that the Commission reject Kennecott’s request for rates
303 based on Schedule 31 is not supported by any studies intended to determine the projected

²⁷ See *id.* at 498-500 (“The Company does not have adequate time to acquire incremental resources to serve Kennecott’s load in 2026 resulting in an increased risk of market purchases.”)

²⁸ See *id.* at 616-619 (noting that RMP has not performed any cost of service studies regarding service to Kennecott).

304 cost to serve Kennecott or any demonstration that Schedule 31 rates would be insufficient
305 to recover the cost of service. As such, RMP's proposal that the Commission require
306 Kennecott to pay energy rates based on the higher of Schedule 9 energy charges or a real-
307 time energy cost is not supported by any studies that seek to determine the projected cost
308 to serve Kennecott or how the RMP revenues associated with such a rate structure would
309 compare to the cost to serve Kennecott.

310 In addition, RMP's proposal to impose a six-year notice period on energy rates, on
311 the addition of onsite resources, and on the addition of resources pursuant to Schedule 32
312 or 34 is not based on any studies that would be relevant to those proposals. RMP doesn't
313 offer any study or analysis to support its claim that service to Kennecott in 2026 and beyond
314 would result in an increase in costs to other customers.

315 **Q. Has Kennecott requested that RMP perform studies to determine its cost of service?**

316 A. Yes. In 2022, Kennecott reached out to RMP to discuss the potential that Kennecott would
317 enter into a new ESA that would commence after the current ESA expires. In connection
318 with that outreach, Kennecott requested that RMP conduct a study to determine the cost to
319 serve Kennecott in 2026 and beyond. The parties subsequently entered into lengthy
320 negotiations regarding a new contract, but RMP did not provide to Kennecott any analysis
321 regarding its cost of service. This is essentially the same position the parties are in now.

322 **Q. Has Kennecott submitted data requests in this docket to obtain information regarding
323 studies or analysis performed by RMP?**

324 A. Yes. Kennecott has submitted numerous data requests for studies or analysis performed
325 by RMP that would be helpful in determining the appropriate rates, terms, and conditions

326 for service to Kennecott. RMP has repeatedly responded that it has not conducted the
327 studies or analysis requested by Kennecott.²⁹

328 **Q. Has Kennecott performed any studies or analysis to determine RMP'S cost to serve**
329 **Kennecott?**

330 A. Kennecott does not have access to data sufficient to conduct such a study. RMP must
331 perform the relevant studies. It has not done so.

332 **Q. Does RMP claim that Schedule 31 rates would be insufficient to allow it to recover its**
333 **costs to serve Kennecott?**

334 A. No. RMP has not conducted studies to determine its cost to serve Kennecott. As a result,
335 it cannot—and does not—claim that Schedule 31 rates are insufficient to recover the
336 revenues associated with the cost to serve to Kennecott.

337 **Q. On what basis does RMP assert that Schedule 31 rates are inappropriate?**

338 A. RMP simply asserts that Schedule 31 does not apply to customers with more than 15 MW
339 of onsite resources. RMP has not performed any analysis to suggest that Schedule 31 rates
340 would not allow RMP to recover the cost to serve a customer that, like Kennecott, has more
341 than 15 MW of onsite resources. In his rebuttal testimony, Kevin Higgins discusses the 15
342 MW limitation on onsite resources set forth in Schedule 31 and addresses the question of
343 whether Schedule 31's rates could appropriately apply to Kennecott.

²⁹ See Exhibit 2.1 (RMP Response to KUC Data Requests 1.5, 2.1-2.3 & 2.5-2.6)

344 **B. Response to RMP’s Proposed Rates of Service (Energy Charges)**

345 **Q. How does RMP’s proposal regarding energy charges differ from Schedule 31?**

346 A. For a transmission voltage customer like Kennecott, Schedule 31 energy charges are equal
347 to the energy charges in Schedule 9. RMP proposes that, from January 1, 2026 through
348 the date that is six years following the date Kennecott withdraws its notice of intent to
349 receive service from a nonutility energy supplier, Kennecott should pay energy rates that
350 are the *higher of* either (a) Schedule 9 energy rates or (b) a real-time market rate to be
351 determined by the Commission.

352 **Q. Does RMP offer any justification for its recommendation that Kennecott pay the**
353 ***higher of* either (a) Schedule 9 energy charges or (b) a real-time market rate?**

354 A. RMP’s proposal is not based on any analysis that these charges are necessary to allow RMP
355 to recover its cost to serve Kennecott.

356 Kevin Higgins addresses RMP’s proposed “higher of” energy charge proposal in
357 his rebuttal testimony, including whether the proposal is just and reasonable.

358 **Q. Would RMP’s proposal regarding energy charges increase Kennecott’s costs as**
359 **compared to what it pays pursuant to the ESA?**

360 A. Yes, RMP’s proposal would significantly increase Kennecott’s costs over the current ESA.
361 Pursuant to the ESA, Kennecott pays [REDACTED]
362 [REDACTED]
363 [REDACTED]

364 [REDACTED]

365 [REDACTED]

366 While [REDACTED], RMP does not acquire
367 day-ahead market products to serve Kennecott's Block 2 load. Instead, RMP serves all
368 load, including Kennecott's load, through a least-cost dispatch process in which it
369 dispatches system resources or acquires market products based on the lowest cost resources
370 available to meet load requirements.³¹ RMP may serve load, including Kennecott's load,
371 using system resources or market products, some or all of which may be less expensive
372 than the price Kennecott pays under the ESA. The revenues that RMP receives from
373 Kennecott are sufficient to ensure that RMP recovers its costs to serve Kennecott.³² RMP
374 has never stated otherwise and has not provided any analysis in this docket to indicate that
375 it is under-recovering its costs.

376 RMP's proposal to require Kennecott to pay the "higher of" Schedule 9 energy
377 charges or real-time market prices would significantly increase the revenues that RMP
378 recovers from Kennecott. Kennecott is currently exposed to fluctuating market prices and
379 pays those market prices whether they are higher or lower than Schedule 9 energy charges.
380 There are significant periods of time when Kennecott pays very high market prices for
381 energy. This exposure to high market prices is mitigated somewhat by periods when
382 market prices are low. Under RMP's proposal, Kennecott would continue to pay market

³⁰ See CONFIDENTIAL Exhibit 2.4 (ESA § 5.01).

³¹ See Exhibit 2.1 (RMP response to Kennecott DR 2.7).

³² See Exhibit 2.2 (Docket No. 16-035-33, Direct Testimony of Paul Clements (RMP) at lines 32-34).

383 rates when market prices are high, but Kennecott would pay Schedule 9 rates when market
384 prices are low. This would result in a significant increase in Kennecott's energy costs.

385 **Q. Does RMP offer any justification for its recommendation that a market-rate**
386 **component be based on "real-time" market pricing rather than some other measure**
387 **of market purchases?**

388 A. No. RMP does not explain why "real-time" market pricing should be utilized. [REDACTED]
389 [REDACTED]
390 [REDACTED]
391 [REDACTED]

392 [REDACTED] RMP has not asserted that this is insufficient
393 to recover its costs to serve Kennecott or that real-time energy prices are somehow superior
394 to day-ahead market prices to achieve the intended goal. Again, RMP will optimize
395 dispatch and market purchases to serve all load (including Kennecott's load), so RMP is
396 not actually exposed to the real-time energy market for the entirety of the energy it will
397 serve to Kennecott.

398 **C. Response to RMP's Proposed Rates of Service (Power Charges)**

399 **Q. Please clarify Kennecott's proposal regarding power charges.**

400 A. RMP indicated in its direct testimony that it is unsure what Kennecott proposes regarding
401 power charges.³⁴ To clarify, Kennecott proposes for all purposes that the rates it pay are
402 those set forth in Schedule 31 for all customers on that tariff. Kennecott acknowledges that
403 the current charges in Schedule 31, including the power charges, are subject to change in

³³ See CONFIDENTIAL Exhibit 2.4 (ESA § 5.01).

³⁴ See Direct Testimony of Craig Eller (RMP) at lines 599-611.

404 the next rate case. Kennecott simply proposes that those charges, whatever they are for all
405 Schedule 31 customers at any given time, apply to Kennecott.

406 Kevin Higgins offers rebuttal testimony regarding RMP's proposal on power
407 charges and I defer to him on that issue.

408 **Q. RMP asserts that Kennecott's Backup Contract Power must match the nameplate**
409 **capacity of its onsite generation resources.³⁵ Do you agree?**

410 A. No. Kevin Higgins addresses this issue in his rebuttal testimony. In that testimony Mr.
411 Higgins addresses his understanding of operations at Kennecott's smelter and its associated
412 cogeneration system, which I will address here. When the smelter is not operating, the
413 smelter cogeneration system is not generating electricity. Instead, the loss of load from the
414 smelter being down matches or exceeds the loss of generation. In this scenario, Kennecott
415 does not require backup service from the utility to replace the lost capacity of the smelter's
416 onsite generation facility because its load needs have been reduced.

417 **Q. How should the Commission rule with respect to RMP's proposal regarding demand**
418 **costs?**

419 A. The Commission should adopt Kennecott's proposal and direct the parties to enter an
420 agreement utilizing the rates, terms, and conditions of Schedule 31. In the event the
421 Commission adopts Kennecott's proposal regarding Schedule 31 rates, it should reject
422 RMP's proposal to require backup contract demand to match the nameplate capacity of
423 Kennecott's onsite resources.

³⁵ See *id.* at lines 323-328.

424 To the extent that the Commission concludes that Kennecott is to be treated as the
425 marginal customer and should pay the incremental cost to serve it, then it should reject
426 RMP’s effort to impose demand costs on Kennecott. As noted above, the current ESA—

427 [REDACTED]

428 [REDACTED]—ensures that Kennecott contributes to fixed costs at or
429 above historical levels. RMP’s proposed demand charges (and “higher of” energy charges)
430 would ensure that RMP over-collects from Kennecott and would not be just and reasonable.

431 **D. Response to RMP’s Proposed Rates of Service (Six-Year Waiting Period)**

432 **Q. RMP proposes that Kennecott pay the “higher of” energy charges for a period ending**
433 **six years after it withdraws its notice of intend to take service from a nonutility energy**
434 **supplier. What justification does RMP cite for this six-year waiting period?**

435 A. RMP asserts that “it would take approximately four to six years to add additional
436 generation to meet Kennecott’s load without reliance on incremental market purchases.”³⁶
437 RMP’s bases this time period on the time it estimates it would take to submit a solicitation
438 for new resources, select resources from that solicitation, and then for those resources to
439 be constructed.³⁷

440 **Q. How do you respond to this proposed six-year waiting period?**

441 A. As with all other aspects of RMP’s proposals in this docket, this six-year notice period is
442 offered without any studies or other analytical support. RMP submits no examples of past
443 resource procurements to support its “estimate.” It just states an estimate without any
444 context. Even then, RMP asserts that the waiting period applicable to Kennecott should be

³⁶ *Id.* at lines 233-235.

³⁷ *Id.* at lines 235-239.

445 six years when the “estimated” resource procurement window is four to six years. RMP
446 can and does acquire resources outside of Commission-approved resource solicitations but,
447 even focusing only on those solicitations, RMP does not explain why Kennecott should be
448 required to wait six years when RMP estimates that it can obtain resources in four years.

449 **Q. Is RMP required to obtain resources through a Commission-approved procurement**
450 **process?**

451 A. No. RMP can and does obtain resources outside of a resource procurement process. Very
452 recently, RMP submitted its 2023 IRP Update in which it states that RMP will seek to
453 procure battery resources “outside of a request for proposals process.”³⁸ RMP has also
454 quite recently, and outside of a procurement process, entered into an agreement with the
455 Green River Energy Center—a solar and storage project in Utah—to increase battery
456 capacity from 400 MW to 1,600 MW.³⁹ In the past several years, RMP has also acquired
457 the 240 MW Pryor Mountain Wind Project and the 120 MW Cedar Springs III wind project
458 outside of a procurement process. RMP testified in the 2020 general rate case that it
459 acquired the Pryor Mountain project after becoming aware of the opportunity in October
460 of 2018, and that the project was expected to reach commercial operation by December of
461 2020.⁴⁰ COVID-related delays pushed the COD of the full capacity of the project into the
462 2nd Quarter of 2020,⁴¹ but this timeline remains much shorter than the six year notice
463 provision RMP proposes to impose on Kennecott.

³⁸ See Ex. 2.5 (Excerpt from 2023 IRP Update at 14).

³⁹ See Ex. 2.6 (Energy Storage News & Salt Lake Tribute articles).

⁴⁰ Ex. 2.7 (Docket No. 20-035-04 Direct Testimony of Robert Van Engelenhoven at lines 49-75).

⁴¹ Ex. 2.8 (Docket No. 20-035-04 Rebuttal Testimony of Robert Van Engelenhoven at lines 13-50).

464 Similarly, RMP acquired the 120 MW Cedar Springs III wind project outside of a
465 resource procurement. RMP became aware of the opportunity to acquire the output of the
466 Cedar Springs III project in November of 2018. It subsequently entered into a PPA for that
467 project and the project reached commercial operation in December of 2020.⁴² Again, this
468 timeline is much shorter than the six-year notice provision RMP proposes to impose on
469 Kennecott.

470 In short, RMP has the ability to acquire resources outside of a procurement process
471 and there is no rational basis to impose a six-year notice period on Kennecott.

472 **Q. RMP proposes that Kennecott be subject to this same six-year waiting period before**
473 **being permitted to install onsite resources or to acquire resources pursuant to**
474 **Schedules 32 or 34.⁴³ Is the six-year period reasonable in either of these contexts?**

475 A. No. RMP's proposal that Kennecott be required to give six years' notice before installing
476 onsite resources or acquiring resources through Schedules 32 or 34 is based on the same
477 rationale for RMP's proposed six-year "waiting period" discussed above, tied to RMP's
478 Commission-approved solicitation processes.

479 If in the future Kennecott were to bring additional generation capacity by adding
480 more onsite resources or acquiring resources through Schedules 32 or 34, RMP would not
481 need to respond by acquiring additional resources. As such, it's not logical to impose a
482 notice period based on the time it takes RMP to acquire additional resources through a
483 resource solicitation.

⁴² See Ex. 2.9 (WY PSC Docket No. 20000-545-ET-18, May 2019 Rebuttal Testimony of Mark Tourangeau at page 12, line 9 through page 13, line 20).

⁴³ See Direct Testimony of Craig Eller (RMP) at lines 457-461.

484 Kennecott is willing to provide adequate and reasonable notice in the event it brings
485 additional resources onto the system. To Kennecott's knowledge, no other customer is
486 required to provide six years of notice before adding additional resources. Kennecott asks
487 that this Commission reject any proposal that imposes restrictions that do not apply to other
488 RMP customers.

489 **E. Response to RMP's Testimony re: EBA, RBA, REC Purchases, Demand Response**

490 **Q. In your direct testimony, you recommend that the Commission order that Kennecott**
491 **not be subject to the Schedule 94 (Energy Balancing Account) surcharge for a period**
492 **of time after the conclusion of the current ESA. Please explain your position on this**
493 **matter.**

494 A. Kennecott's position is that it should not be subject to the Schedule 94 surcharges intended
495 to true up the difference between base EBA costs and actual EBA costs during the years in
496 which the current ESA applies. In Docket No. 16-035-33, the docket in which the
497 Commission approved the current ESA between Kennecott and RMP, all parties to this
498 docket stipulated that the "Kennecott will not be subject to any Energy Balancing Account-
499 related rate changes effective after December 1, 2016 and through the term of the
500 Kennecott Contract."⁴⁴

501 The EBA is intended to true up the difference between the projected net power costs
502 included in RMP's tariff rates and the actual net power costs it incurs to serve customers.

503 Pursuant to the ESA, [REDACTED].

504 As such, it is not subject to EBA surcharge. The term of the ESA concludes on December

⁴⁴ Ex. 2.10 (Docket No. 16-035-33 Oct. 7, 2016 Settlement Stipulation ¶ 12 and Nov. 28, 2016 Order (approving ESA as amended by Settlement Stipulation)).

505 31, 2025 but the EBA surcharges intended to true up the difference between base and actual
506 EBA costs during the term of the ESA will continue beyond the end of the ESA. The true-
507 up for costs incurred in 2024 will be collected from customers from July 1, 2025 through
508 June 30, 2026. The true up for costs incurred in 2025 will be collected from customers
509 from July 1, 2026 through June 30, 2027.

510 It does not make sense to impose EBA surcharge costs on Kennecott that are
511 intended to true up the difference between base and actual net power costs that are incurred
512 during a time when Kennecott is not paying tariff rates. Kennecott proposes to pay tariff
513 rates starting January 1, 2026 and, therefore, should pay the EBA base rates at that time.
514 Kennecott should begin to pay the true-up surcharge to be imposed starting in July of 2027
515 that seeks to true-up the difference between projected and actual EBA costs for calendar
516 year 2026.

517 **Q. RMP asserts that Kennecott should be subject to the EBA surcharge but not the**
518 **Schedule 98 REC balancing account credit. How do you respond?**

519 A. RMP's assertion that Kennecott should be subject to Schedule 94 EBA surcharges is,
520 presumably, limited to a circumstance in which Kennecott is paying Schedule 31 rates only.
521 RMP states that delaying application of the EBA surcharge as Kennecott suggests in this
522 docket "is inconsistent with all other Schedule 31 customers as well as for all new
523 customers to the Company's system which immediately begin service at the then-existing
524 tariff rates."⁴⁵ RMP's proposals in this docket do not purport to treat Kennecott as a
525 Schedule 31 customer or even on par with new customers and, as such, Kennecott assumes

⁴⁵ Direct Testimony of Craig Eller (RMP) at lines 351-353.

526 RMP’s recommendation is limited to a circumstance in which the Commission adopts
527 Kennecott’s primary recommendation.

528 Kennecott further notes that RMP’s position on the applicability of Schedule 94
529 EBA surcharges is logically inconsistent with its position regarding Schedule 98 RBA
530 credits. RMP states that Kennecott should not be eligible for Schedule 98 credits “until the
531 rates that reflect REC revenue true-up for 2026 since the REC revenue true up prior to 2026
532 will include revenue [from] Kennecott that pays for system RECs under the Non-Gen/REC
533 Agreement.”⁴⁶ RMP’s position that the RBA credits should not apply to Kennecott because
534 Kennecott revenues are included in the RBA should, if adopted and if applying the same
535 logical basis, result in a finding that the EBA surcharge should not apply to Kennecott until
536 the EBA surcharge to true-up for 2026 EBA costs is imposed in 2027. This is because
537 revenues that RMP collects from Kennecott under the ESA are included in the EBA just as
538 revenues that RMP collects from Kennecott under the REC Agreement are included in the
539 RBA. Kennecott agrees that it makes sense that it should not receive the RBA credit in
540 2026. For the same reason, though, it should not be subject to EBA charges in 2026, either.

541 **Q. Your direct testimony also referenced a request dealing with the purchase of RECs.**
542 **Can you state your position on that issue?**

543 A. Kennecott currently has a REC purchase agreement in place with RMP and may in the
544 future seek to satisfy decarbonization goals through the purchase of RECs. To the extent
545 that RECs are available, Kennecott requests the opportunity to purchase them from RMP.

⁴⁶ *Id.* at lines 354-357.

546 **Q. Your direct testimony also referenced a request dealing with the possibility that**
547 **Kennecott could provide a demand response product. Does the Commission need to**
548 **issue a ruling on that issue?**

549 A. No. My direct testimony simply indicated that Kennecott seeks the same opportunities as
550 other customers with respect to providing demand response products. The Commission
551 need not address this point in this docket.

552 **IV. KENNECOTT'S ALTERNATIVE RECOMMENDATION**

553 **Q. What is Kennecott's Primary Recommendation?**

554 A. Kennecott's primary recommendation continues to be the one set forth in my direct
555 testimony—that this Commission order the parties to enter into a contract for a term from
556 January 1, 2026 through December 31, 2032 that (other than the timing of the imposition
557 of the EBA and RBA sur-charges and -credits as discussed herein) utilizes the rates, terms,
558 and conditions of Schedule 31.

559 **Q. Does Kennecott offer an alternative recommendation in the event the Commission**
560 **does not adopt its primary recommendation?**

561 A. Yes. As an alternative, and only if this Commission determines that it must treat Kennecott
562 as the "marginal customer" for some period of time, I propose that the Commission direct
563 the parties to enter into a new contract for the same term that extends the rates, terms, and
564 conditions of the existing ESA for a period ending three years after Kennecott withdraws
565 its notice of intent to take service from a nonutility energy supplier and then, thereafter,
566 utilizes the rates, terms and conditions of Schedule 31 (with the same caveat about the
567 timing of the imposition of EBA surcharges as discussed herein).

568 **Q. What would this alternative proposal look like in practice?**

569 A. In this alternative proposal, the new electric service agreement that would have two phases,
570 each with different rates for service. Rates during Phase 1 would be consistent with an
571 extension of the rates in the current ESA, [REDACTED]

572 [REDACTED] All other terms and conditions of service in the current ESA would
573 apply during Phase 1, except for those provisions related to the term and those that suggest
574 or indicate that Kennecott will not be a RMP customer at the conclusion of Phase 1. Phase
575 1 would start on January 1, 2026 and would conclude on the three-year anniversary of
576 Kennecott's withdrawal of its notice of intent to take service from a nonutility energy
577 supplier.

578 Phase 2 would begin when Phase 1 ends and would apply for the remainder of the
579 new agreement. Phase 2 rates will be consistent with rates set for all Schedule 31
580 customers. All other terms and conditions of Schedule 31 would also apply during Phase
581 2, except that, consistent with my discussion regarding EBA surcharges above, Kennecott
582 would not be subject to EBA true-up surcharges that true-up calendar year EBA costs for
583 periods when Kennecott is exposed to market rates.

584 **Q. Please explain why extending the current rate-related terms of the ESA for three**
585 **years beyond the date that Kennecott withdraws its notice addresses the concerns**
586 **raised by the parties and makes sense in this context.**

587 A. This alternative proposal results in the same outcome that would have resulted had
588 Kennecott selected [REDACTED]. [REDACTED]

589 [REDACTED]

590 [REDACTED]

591 [REDACTED]
592 [REDACTED]
593 [REDACTED] As discussed herein,
594 Kennecott was not in a position [REDACTED] because it did not
595 and could not know the rates it would pay for service from RMP after the three-year notice
596 period expired. This alternative proposal would provide the certainty that has been lacking
597 during the entire time that Kennecott and RMP have been engaged in discussions regarding
598 a new contract and would, therefore, permit Kennecott to withdraw its notice of intent to
599 take service from a non-utility energy supplier.

600 RMP states throughout its direct testimony that Kennecott's decision not [REDACTED]
601 [REDACTED] has reduced the time for RMP to plan to serve
602 Kennecott. Others, including OCS witness Bela Vastag, have raised concerns that RMP
603 has insufficient time to plan to serve Kennecott. This alternative proposal addresses that
604 point by ensuring that RMP has the same time period to plan as is contemplated in the ESA.

605 **Q. If either Kennecott's primary or alternative proposal is adopted, when would**
606 **Kennecott plan to withdraw its notice of intent to take service from a nonutility**
607 **energy supplier?**

608 A. Kennecott cannot make the decision to withdraw its notice unless and until it knows the
609 rates it would pay for electric service from RMP. If either of Kennecott's primary or
610 alternative proposal is adopted, Kennecott expects that it would withdraw its notice of

⁴⁷ CONFIDENTIAL Exhibit 2.4 (ESA § 2.04).

611 intent to take service from a nonutility energy supplier as soon as possible after a final
612 Commission order approving the resulting contract is entered and is no longer appealable.

613 **V. RESPONSE TO OCS TESTIMONY**

614 **Q. What does the OCS recommend in response to the proposals submitted by Kennecott**
615 **and RMP?**

616 A. The OCS recommends that the Commission decline to adopt either Kennecott's primary
617 proposal or either of RMP's primary or secondary proposal.

618 **Q. What concerns does the OCS raise regarding Kennecott's primary proposal?**

619 A. The OCS expresses two main concerns. First, it expresses a concern about utilizing the
620 rates in Schedule 31 for Kennecott on the grounds that Schedule 31 rates were designed
621 for customers with up to 15 MW of onsite resources and Kennecott's onsite resources
622 exceed 15 MW.⁴⁸ Second, it is concerned that RMP has not had an opportunity to plan to
623 serve Kennecott and that Schedule 31 rates may not be sufficient to protect other ratepayers
624 from the risk of incremental market purchases in the event that RMP serves Kennecott
625 starting in 2026.⁴⁹

626 **Q. How do you respond to these concerns?**

627 A. With respect to the OCS's first concern, Kennecott acknowledges that Schedule 31
628 expressly excludes customers with onsite generation greater than 15 MW, but that
629 categorical exclusion does not mean that the rate components would necessarily fail to
630 allow RMP to recover its cost of service for a customer like Kennecott. This is addressed
631 in the rebuttal testimony filed by Kevin Higgins. Kennecott supports the OCS's position

⁴⁸ See Direct Testimony of Bela Vastag (OCS) at lines 69-78.

⁴⁹ See *id.* at lines 79-95.

632 that the Commission should create a tariff rate schedule that would apply to Kennecott.⁵⁰
633 If such a tariff rate existed, Kennecott could have made a rational economic decision
634 [REDACTED] But no such tariff rate
635 currently exists and creating one would take far too long to address the current issue before
636 the Commission regarding service starting in 2026.

637 With respect to OCS’s second concern, Kennecott restates its position that it is
638 willing to pay its cost of service but that there is no data in this docket to support a
639 conclusion regarding what that cost of service is or a conclusion that Schedule 31 rates are
640 insufficient to recover those costs. Kennecott has requested that information but has not
641 received it. If, despite the lack of data, the Commission finds that Schedule 31 rates will
642 not allow RMP to recover its cost of service to Kennecott, Kennecott’s alternative proposal
643 addresses this point.

644 **VI. CONCLUSION**

645 **Q. Your rebuttal testimony does not respond to all of the points and issues raised by all**
646 **other witnesses. Does this mean that Kennecott agrees with those points?**

647 A. No. My silence on any issue raised by others should not be interpreted as support for those
648 positions.

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

650 A. Yes.

⁵⁰ See *id.* at lines 62-65 (“There should always be an option for tariffed service instead of relying on a special contract. When a customer is taking service under an existing ESA, that customer should be able to move to tariffed rates when its ESA ends.”).