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# Office of Consumer Services

UTAH DEPARTMENT OF COMMERCE

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To: The Public Service Commission of Utah

From: The Office of Consumer Services

Michele Beck, Director  
Béla Vastag, Utility Analyst

Date: January 31, 2025

Subject: Docket No. 23-035-51 – OCS Comments

RE: Application of Kennecott Utah Copper, LLC for an Order Determining the Rates, Terms, and Conditions of Electric Service by Rocky Mountain Power to Kennecott

## INTRODUCTION

On December 13, 2024, Kennecott Utah Copper, LLC (“Kennecott”) and Rocky Mountain Power (“RMP”) filed a Stipulation and Settlement Agreement with the Public Service Commission (“PSC”). The Agreement is for a new Electric Service Agreement (“ESA”) executed on September 20, 2024 between RMP and Kennecott to replace the existing ESA when it expires on December 31, 2025. On January 7, 2025, the PSC issued a Scheduling Order setting deadlines of January 31, 2025 for parties to file initial comments and February 21, 2025 for parties to file reply comments.

In accordance with the schedule, the Utah Office of Consumer Services (“OCS”) submits the following initial comments on the new ESA which will become effective on January 1, 2026 if approved by the PSC.

## BACKGROUND

On November 13, 2023, Kennecott initiated this docket when it filed a request with the PSC asking it to approve reasonable rates, terms and conditions for electric service from RMP to Kennecott for when its current ESA expires on December 31, 2025. In this November 2023 filing, Kennecott also provided its proposal for a new ESA beginning on January 1, 2026. Kennecott initiated this filing because negotiations between Kennecott and RMP had stalled and were at an impasse.

On November 24, 2023, the PSC issued a Scheduling Order setting deadline for parties to file several rounds of testimony. From December 2023 to April 2024, Kennecott, RMP, OCS and the Division of Public Utilities (“DPU”) filed testimony. On May 7, 2024, the PSC granted Kennecott’s Motion to Vacate Scheduling Order (i.e. suspend the remaining deadlines and hearing) because Kennecott and RMP were in active settlement discussions and were making progress on agreeing on a new ESA, actually reaching “an agreement in principle” at that time. On December 13, 2024, Kennecott and RMP filed with the PSC the executed new ESA at issue in this docket.

### **OCS’S EVALUATION OF KENNECOTT’S NEW ESA**

The terms of the proposed new ESA are complex and difficult to evaluate. RMP and Kennecott did not file any supporting calculations or analyses for the new ESA, in particular there was no comparison of revenue or cost of service between the existing ESA and the new ESA. These comparisons are difficult to perform as the OCS does not have the same expertise nor the same access to forecasts and models that RMP and Kennecott do. Therefore, the OCS submitted data requests (“DRs”) to both Kennecott and RMP requesting some of this information, including some modeling comparing the existing ESA with the proposed new ESA. Their responses to these DRs are attached to the end of these comments. However, the attachments referenced in these responses are not included because they are designated as highly confidential and commercially sensitive.

After reviewing the highly confidential DR attachments, it appears that Kennecott will be paying more for electric service under the new ESA starting January 1, 2026 than under the existing ESA. In other words, the new Kennecott ESA will generate more annual revenue to RMP from Kennecott which seems to partially address one of the OCS’s major concerns about these types of special contracts – that Kennecott appropriately covers the costs to serve it. Also, the 7-year contract term is a reasonable length and the terms of RMP providing electric service to Kennecott will be reviewed again prior to when this new ESA expires on December 31, 2032 in a new docket addressing a subsequent proposal for terms of service. Given these circumstances, the OCS did not identify any problems with the proposed new ESA, keeping in mind that the terms are complex and difficult to evaluate.

The OCS also takes this opportunity to voice our frustrations with Kennecott’s ESAs and with special contracts in general. It is difficult for regulators and participating parties such as the OCS to verify that these contracts produce actual results as expected or promised. The OCS understands that in some years, Kennecott’s current and past ESAs have been quite favorable to Kennecott and sometimes also resulted in (from the OCS’s perspective) unexpected levels of costs being passed through to other customers in the Energy Balancing Account. To be fair, recently, the OCS understands there have also been less favorable years for Kennecott. Power markets can be highly volatile, which we have seen recently. When evaluating ESAs, it is unclear how these contracts ensure that unexpected shifts in costs are shared fairly between tariffed customers and special contract customers, especially under unpredictable market conditions. Going forward,

the OCS desires to see more analyses and modeling filed concurrently with a proposed new special contract ESA, including scenarios evaluating varying market conditions, in order to provide more transparency and assist in the review of the contract.

## **RECOMMENDATION**

The OCS recommends that the PSC approve the Stipulation and Settlement Agreement for a new Electric Service Agreement between RMP and Kennecott to be effective January 1, 2026.

cc:

Jana Saba, Max Backlund, Katherine Smith Rocky Mountain Power  
Phillip J. Russell, Jeff Armington, Kennecott Utah Copper LLC  
Chris Parker, Division of Public Utilities

**OCS 2.1:** Please provide a sample or a pro forma of a typical monthly bill from Rocky Mountain Power to Kennecott using the terms of the proposed new ESA which was filed with the PSC on December 13, 2024. Please base the pro forma on actual usage from a typical actual monthly billing in 2024 and also please provide a copy of the actual bill from 2024 that the pro forma was based on. The purpose of this request is to understand how the terms of the new ESA will be implemented in practice and how this compares to the terms of the existing ESA.

**Kennecott Response:**

Kennecott does not have in its possession or control a pro forma monthly bill from Rocky Mountain Power responsive to this request and has not created one on its own.

Kennecott has not performed the type of monthly analysis that is contemplated in the request. Kennecott's analysis of the costs associated with the new ESA have been on an annual basis, which analysis is provided in response to OCS 2.2.

**OCS 2.2:** Please provide copies of analyses that Kennecott has performed comparing annual dollars paid to RMP for electric service under the existing ESA as compared to the new ESA which was filed on December 13, 2024.

**Kennecott Response:** Please see Highly Confidential Attachment OCS 2.2, produced herewith, which contains highly sensitive commercial information of Kennecott.

**OCS 2.3:** Does the new ESA which was filed with the PSC on December 13, 2024 have a different structure, including different terms, such that they would cause Kennecott to operate its facility in a different manner than the existing ESA? Or would Kennecott still operate the same as in the past? In addition, would any such changes in operation affect comparability of the monthly bills requested in Question 2.1 above? Please explain.

**Kennecott Response:**

Kennecott does not expect that the differences in structure and terms between the current ESA and the new ESA will cause it to operate its facilities differently than in the past. Kennecott's operation of its facilities are based on a wide range of variables. The cost of operations—which include electricity costs among many other categories of costs—is one such variable. Market conditions are another variable.

Kennecott expects that the cost of electricity will increase when the current ESA expires and the new ESA goes into effect. This increase in electricity costs will factor in to Kennecott's overall decision-making as to how it operates its facilities, but Kennecott's current expectation is that—if all other variables were held steady—it will continue to operate its facilities similarly under the new ESA as it did under the old ESA.

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OCS Data Request 2.1

### **OCS Data Request 2.1**

Please provide a sample or a pro forma of a typical monthly bill from Rocky Mountain Power to Kennecott using the terms of the proposed new ESA which was filed with the PSC on December 13, 2024. Please base the pro forma on actual usage from a typical actual monthly billing in 2024 and also please provide a copy of the actual bill from 2024 that the pro forma was based on. The purpose of this request is to understand how the terms of the new ESA will be implemented in practice and how this compares to the terms of the existing ESA.

### **Response to OCS Data Request 2.1**

PacifiCorp objects to this request as unduly burdensome, requiring the creation of a new report, analysis, or preparation of study, lacking a high degree of relevance to the proceeding and not reasonably calculated to lead to the discovery of admissible information. Subject to and without waiving the foregoing objection, PacifiCorp responds as follows:

The Company has not performed the requested analysis for calendar year 2024.

Please refer to the Company's response to OCS Data Request 2.2 regarding the analysis the Company has performed for calendar year 2023.

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OCS Data Request 2.2

### **OCS Data Request 2.2**

Please provide copies of any analyses that the Company has performed comparing annual revenues from Kennecott under the existing ESA as compared to the new ESA which was filed on December 13, 2024. If no analyses have been performed, please explain how expected revenues under the new ESA will be sufficient to cover the cost of RMP providing service to Kennecott and whether RMP expects less, more or the same amount of revenue from Kennecott.

### **Response to OCS Data Request 2.2**

**The requested information is customer-specific confidential information. The Company requests special handling.**

Please refer to Customer-Specific Confidential Attachment OCS 2.2.

Note: Customer-Specific Confidential Attachment OCS 2.2 contains customer-specific information and is considered business confidential. As stated above, the Company requests special handling. This information is only being provided to the Division of Public Utilities (DPU) and the Office of Consumer Services (OCS). In addition to the confidentiality provisions stated below, this information is confidential business information as described in Utah Code section 63G-2-305(2) and (3). Specifically, the information about terms, conditions, charges, and / or rates charged to Kennecott, disclosure of which would result in unfair competitive injury to the Company. The information is therefore protected from disclosure through a Government Records Access and Management Act (GRAMA) request.

Confidential information is provided subject to Public Service Commission of Utah (UPSC) Rules R746-1-601–606.



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OCS Data Request 2.3

### **OCS Data Request 2.3**

Does the new ESA which was filed with the PSC on December 13, 2024 have a different structure, including different terms, such that they would cause Kennecott to operate its facility in a different manner and impose different costs on RMP's system than the existing ESA? Or would RMP expect Kennecott to operate the same as in the past? Please explain.

### **Response to OCS Data Request 2.3**

PacifiCorp objects to this data request to the extent it calls for speculation. The Company cannot speculate as to how Kennecott Utah Copper, LLC (Kennecott) plans to operate their facility under the new electric services agreement (ESA). Subject to and without waiving the foregoing objection, PacifiCorp responds as follows:

Yes. The structure and terms of the new ESA filed with the Public Service Commission of Utah (UPSC) is different than the prior ESA. PacifiCorp respectfully declines to guess at how Kennecott may adjust its operations based on the new ESA as it does not have sufficient information to make an educated guess at how Kennecott will operate its business just based on the new ESA.