Matthew A. Nykiel (ISB No. 10270)
P.O. Box 2308
Sandpoint, ID 83864
Ph: (208) 265-9565
Fax: (208) 265-9650
mnykiel@idahoconservation.org

Attorney for the Idaho Conservation League

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA'S PETITION FOR AN EXTENSION TO FILE ITS 2019 ELECTRIC INTEGRATED RESOURCE PLAN	**CASE NO. AVU-E-19-01** **COMMENTS OF IDAHO CONSERVATION LEAGUE IN SUPPORT OF AVISTA'S REQUEST TO EXTEND THE IRP FILING DEADLINE**

The Idaho Conservation League ("ICL") submits the following comments in support of Avista Corporation's ("Avista") request for a six-month extension of its August 31, 2019 Integrated Resource Plan ("IRP") filing deadline.

2019 EXPIRATION OF COLSTRIP'S SOLE COAL SUPPLY AGREEMENT AND IMPENDING COAL ASH REMEDIATION OBLIGATIONS WARRANT IRP EXTENSION

In addition to state legislative proposals that may affect the regional electric market, uncertainty surrounding Avista's 4th largest company-owned electric generation facility, Colstrip Units 3 and 4 ("Colstrip"), warrants the additional time Avista needs to update its IRP models to reflect potential changes to customer costs and liabilities associated with generating electricity from Colstrip. As the Idaho Public Utilities Commission ("IPUC") recently stated "the actual useful life of those units is uncertain." Order No. 34276.

BACKGROUND

As a 15 percent owner of Colstrip Units 3 and 4, Avista is party to a coal supply agreement ("Amended and Restated Coal Supply Agreement dated, August 24, 1998, hereafter referred to as the "CSA") between the Colstrip owners and Westmoreland Coal Company ("Westmoreland"), the corporation that owns the Rosebud Mine and is the sole supplier of coal to Colstrip. However, with over $1.4 billion in debt, Westmorland filed for Chapter 11 bankruptcy in United States Bankruptcy Court on October 9, 2018. *See* Attachment 1. In March 2019, the bankruptcy court approved the dissolution of Westmoreland and the sale of most of its assets to a new entity, Westmoreland Mining LLC ("Westmoreland Mining"), which was created and is controlled by Westmoreland's former creditors. *See* Attachment 2. As such, Westmoreland Mining is now party to the CSA along with the Colstrip owners.

The CSA provides 100 percent of the coal requirements for Colstrip Units 3 and 4, but during Westmoreland's bankruptcy proceedings this past January, the creditors that now run Westmoreland Mining

informed the Colstrip owners of their intention to reject the CSA, in advance of the CSA's expiration on December 31, 2019. The Colstrip owners, including Avista, filed statements in the bankruptcy proceedings to flag the serious risks to customers if the CSA was not maintained, stating: "Without the Coal Supply Agreement, the Public Utilities will not be able to operate the Colstrip Plants, which generate power that each of the Public Utilities then uses to provide electricity to their respective customers in Oregon and Washington." *See* Attachment 3. The operator of the Colstrip Plant, Talen Montana, LLC ("Talen"), elaborated on the situation, stating:

> "...it appears that the WLB Debtors are threatening rejection and the withholding of vital coal to these captive Buyers to extract what in Talen's view are extremely unreasonable terms from them in the context of ongoing commercial negotiations focused on extending the U34 Coal Supply Agreement beyond its December 31, 2019 expiration date. The Terms reached under these coercive circumstances would be binding on the parties for many years, but at the very least would reduce actual operational time of the Colstrip Plant by a significant amount by virtue of inflated costs. Critically for the Buyers, the Colstrip Plant currently has one source of coal—WECO's Rosebud Mine—and the Rosebud Mine has only one logical buyer of coal—the Colstrip Plant. This monopolistic situation, involving an important product affecting the public interest—coal for power for electricity for, among other things, warmth in the winter—creates an ability for WECO to squeeze the Buyers for greater and greater profits, potentially leaving the Buyers with no choice but to agree to pay exorbitant ransom prices for many years for this vital, single-source commodity. Such situation could lead to a drastic curtailment of operations at the Colstrip Plant or potentially accelerate a permanent shutdown."

See Attachment 4.

During the course of bankruptcy proceedings, Westmoreland Mining changed course and agreed to abide the CSA until the end of 2019, at which time the CSA will expire and Colstrip will eventually run out of coal fuel, unless the CSA is renewed. Importantly, no alternative coal sources exist because the Colstrip owners have only been permitted by the State of Montana to burn coal specifically from the Rosebud Mine. *See* Attachment 5. As of the date of ICL's comments, the status of Avista's and the other Colstrip owners' negotiations to renew the CSA is unknown. This means that in approximately nine months Idaho ratepayers are at risk of their 4th largest energy-generating unit running out of fuel or at risk of potential changes to the cost of coal, given the "monopolistic situation," if the CSA is renewed.

Along with risks to the coal supply, Colstrip has had major problems meeting air quality requirements. During the summer of 2018, Talen was forced to shut down units 3 and 4 because the pollution controls for mercury and air toxics did not work as expected.[1] *See* Attachments 6 and 7. Despite this unexpected shutdown during the

[1] *See also* Billings Gazette "Colstrip operating fully after unit shutdowns due to air pollution problems," September 22, 2018 *available at* billingsgazette.com/news/state-and-regional/montana/colstrip-operating-fully-after-unit-shutdowns-due-to-air-pollution/article_d83341dd-6873-5cc3-a8fd-caf61f9ac0ce.html.

summer months, there were no reported impacts to electric service or reliability. This shows that Colstrip, while a large resource in terms of costs to customers, is not an important resource for reliability. A delay in the resource planning process will allow Avista to more fully consider alternative energy and capacity resources that do not have the same risk to fuel supply and the ability to operate within current clean air legal requirements.

Meanwhile, on January 23, 2019, the Montana Department of Environmental Quality ("Montana DEQ") issued a memorandum to the Montana State Legislature, finding that the cost to remediate leaking coal ash ponds at Colstrip is estimated to cost as much as $400 to $700 million. *See* Attachment 8. The Montana DEQ explains that the Colstrip owners, including Avista, are obligated to pay these costs under the operating agreement with Talen, potentially as soon as the end of 2019. It should be noted that the initial costs of cleaning up toxic wastes at sites such as Colstrip are typically underestimated, often by orders of magnitude. Not to mention the fact that every additional day Avista generates electricity from Colstrip, Avista produces more coal ash and more remediation liabilities that Idaho ratepayers will eventually see in electric bills.

Uncertainty surrounding the costs to Avista's Idaho electric customers from Avista's continued ownership in Colstrip Units 3 and 4 warrants the additional time necessary for Avista to develop an IRP that will ensure its Idaho customers continue to receive reliable electricity at just, fair, and reasonable rates. Potentially significant changes to the CSA, that if effective after December 31, 2019, would have a significant impact on Avista's electric rates both in Idaho and the region. Similarly, potentially significant determinations by Montana DEQ by the end of 2019 may also significantly impact Avista's obligations, and, derivatively, its Idaho electric customers, to pay for the remediation of the Colstrip coal ash ponds.

Despite the seriousness of these potential impacts, low cost alternatives exist and are available, so long as Avista is evaluating and planning for them in its IRP process. Just this week, Idaho Power Company ("Idaho Power") signed a 20-year power purchase agreement with an Idaho-based company to purchase power from a solar array in Twin Falls, Idaho. This local solar project is expected to generate 120 megawatts and Idaho Power will initially pay less than 2.2 cents per kilowatt-hour, among the cheapest in the country. And, public utilities nearer to Avista's service territory than Idaho Power are also identifying and pursuing alternative generation facilities to offset pending coal plant closures. This year Portland General Electric disclosed its plans to invest in the Wheatridge Renewable Energy Facility, which is anticipated to combine 300 megawatts of wind energy with 50 megawatts of solar power and 30 megawatts of storage.[2] Puget Sound Energy, this year too, publicized its plan to invest in the Lund Hill Solar Project in central Washington, which will generate 150 megawatts.[3] And just last week, Avista itself selected to purchase wind power from the Rattlesnake Flat Wind project in Adams County, Washington.[4]

Extending the IRP deadline will provide Avista and the public necessary time and data to evaluate alternatives like the ones mentioned above, which will help mitigate the risk and potential impacts from utility and

---

[2] The Oregonian "PGE will spend $160 million on massive renewable energy project in eastern Oregon," February 13, 2019 *available at* www.oregonlive.com/business/2019/02/pge-will-spend-160-million-to-help-develop-massive-renewable-energy-project-in-eastern-oregon.html.

[3] Portland Business Journal "Portland's Avangrid Renewables in giant solar deal with Washington utility," March 14, 2019 *available at* www.bizjournals.com/portland/news/2019/03/14/portlands-avangrid-renewables-in-giant-solar-deal.html.

[4] Avista Corporation "Avista Selects Clearway Energy Group's Rattlesnake Flat Wind Project for Power Purchase Agreement," March 19, 2019 *available at* investor.avistacorp.com/news-releases/news-release-details/avista-selects-clearway-energy-groups-rattlesnake-flat-wind.

state government decisions associated with the fuel costs and remediation at Colstrip. In particular, Avista should use this delay to request indicative pricing for new resources to replace Colstrip.

AVISTA SHOULD USE IRP EXTENSTION TO INCREASE TRANSPARENCY AND DISCUSS COST MITIGATION STRATEGIES

It is critical Avista's Idaho electric customers and the IPUC have the information necessary to provide informed comments on Avista's IRP regarding the future of Colstrip. For example, as far back as 2012, Security Exchange Commission filings indicated that the sole coal supplier to Colstrip, Westmoreland, was experiencing losses that could impact the future price of coal and, accordingly, the price of electricity from Colstrip – in 23 quarters starting in 2012, Westmoreland reported only three quarters with profits. *See* Attachment 9. Yet, not one of Avista's IRPs submitted between 2012 and 2017 provides more than a paragraph of discussion to plan for the risk of increasing coals costs and how these potential costs may impact future resource decisions. Avista's decision-making process must provide the analysis and detail necessary to empower the public and the IPUC to ensure that Idaho ratepayers are not financing long-term investments in electric generating facilities, such as Colstrip, that may be unable to compete and operate given the trends in the regional electric market. Avista's prior IRPs have not provided the public nor the IPUC this benefit.

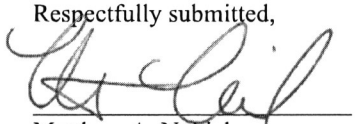
Indeed, the IPUC Staff expressed concerns related to Colstrip in its comments on Avista's 2017 IRP, recommending Avista model the price risk for coal associated with Colstrip in the 2019 IRP, as well as "continue analyzing alternatives and cost mitigation strategies for the plant." *See* Order. No. 33971. One such cost mitigation strategy could involve using the $103 million breakup fee Avista collected after the disintegration of its merger with Hydro One.[5] Using a portion of this breakup fee to address the growing liabilities of Colstrip would help Idaho ratepayers that depend on steady, predictable electric prices, and it would help limit the risk of an unfair and unjust situation, where Colstrip has shutdown but future Idaho ratepayers are obligated to help pay off the long-term costs of Colstrip, even though they may not have benefited from the power Colstrip produced. We recommend that during the six-month extension to the IRP deadline, Avista explicitly evaluate the use of the $103 million breakup fee and other cost mitigation strategies in the context of its 2019 IRP.

[5] *See* Avista's statement regarding Hydro One and the $103 million breakup fee *available at* www.myavista.com/about-us/hydro-one-to-acquire-avista.

In light of the economic uncertainties surrounding the operation and price of electricity from Colstrip and Avista's undetermined obligations for the remediation of Colstrip's coal ash ponds, we respectfully request the IPUC extend Avista's IRP deadline by six months to ensure Avista's IRP models reflect potential changes to customer costs and liabilities associated with generating electricity from Colstrip.

DATED this 28th day of March 2019

Respectfully submitted,



Matthew A. Nykiel
Idaho Conservation League

LIST OF ATTACHMENTS

Attachment 1: Westmoreland Coal Company Bankruptcy Petition, October 9, 2018

Attachment 2: Notice of (I) Entry of Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates and (II) Occurrence of the Plan Effective Date, March 15, 2019

Attachment 3: Objection by Puget Sound Energy, Inc., Portland General Electric Company, PacifiCorp, and Avista Corporation to Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates, January 25, 2019

Attachment 4: Limited Objection of Talen Montana, LLC to Confirmation of Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates, January 25, 2019

Attachment 5: Montana Department of Environmental Quality Air Quality Operating Permit OP0513-14 Issued to Talen Montana, LLC

Attachment 6: Montana Department of Environmental Quality Letter to Talen Montana, LLC regarding Request for information related to compliance with Mercury & Air Toxics Standard, August 31, 2018

Attachment 7: Talen Montana, LLC Response to Montana DEQ August 31, 2018 Letter, September 17, 2018

Attachment 8: Montana Department of Environmental Quality Memorandum regarding Colstrip Steam Electric Station Administrative Order on Consent Report, January 23, 2019

Attachment 9: Institute for Energy Economic and Financial Analysis Research Brief, "Westmoreland Coal Is in Trouble," February 2018

CERTIFICATE OF SERVICE

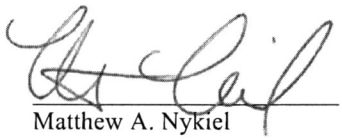
I hereby certify that on this 28th day of March, 2019, I delivered true and correct copies of the foregoing COMMENTS OF IDAHO CONSERVATION LEAGUE IN SUPPORT OF AVISTA'S REQUEST TO EXTEND THE IRP FILING DEADLINE to the following person via the method of service noted:

Electronic Mail:

Diane Hanian
Commission Secretary
Idaho Public Utilities Commission
427 W. Washington St.
Boise, ID 83702-5983
diane.holt@puc.idaho.gov

David J. Meyer
Avista Corporation
P.O. Box 3727
1411 East Mission Avenue
Spokane, WA 99220-3727
david.meyer@avistacorp.com

Linda Gervais
Avista Corporation
P.O. Box 3727
1411 East Mission Avenue
Spokane, WA 99220-3727
linda.gervais@avistacorp.com



Matthew A. Nykiel

Fill in this information to identify the case:	
United States Bankruptcy Court for the: Southern District of Texas (State)	
Case number *(if known):* _____	Chapter 11

☐ Check if this is an amended filing

Official Form 201
Voluntary Petition for Non-Individuals Filing for Bankruptcy

04/16

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's Name — **Westmoreland Coal Company**

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business as* names — **N/A**

3. Debtor's federal Employer Identification Number (EIN) — **23-1128670**

4. Debtor's address

Principal place of business

9540 South Maroon Circle
Number Street

Suite 300

Englewood, Colorado 80112
City State Zip Code

Douglas County
County

Mailing address, if different from principal place of business

Number Street

P.O. Box

City State Zip Code

Location of principal assets, if different from principal place of business

Number Street

City State Zip Code

5. Debtor's website (URL) — **www.westmoreland.com**

6. Type of debtor

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

☐ Partnership (excluding LLP)

☐ Other. Specify: _____

Debtor Westmoreland Coal Company (Name) Case number *(if known)*

7. Describe debtor's business

A. *Check One:*

☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))

☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))

☐ Railroad (as defined in 11 U.S.C. § 101(44))

☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))

☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))

☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))

☒ None of the above

B. *Check all that apply:*

☐ Tax-exempt entity (as described in 26 U.S.C. § 501)

☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)

☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes .

2121 (Coal Mining)

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check One:

☐ Chapter 7

☐ Chapter 9

☒ Chapter 11. *Check all that apply:*

☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,566,050 (amount subject to adjustment on 4/01/19 and every 3 years after that).

☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

☐ A plan is being filed with this petition.

☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

☒ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.

☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

☒ No
☐ Yes. District _____ When _____ (MM/DD/YYYY) Case number _____

District _____ When _____ (MM/DD/YYYY) Case number _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list.

☐ No
☒ Yes. Debtor **See Rider 1** Relationship **Affiliate**

District **Southern District of Texas** When **10/09/2018** (MM / DD / YYYY)

Case number, if known _____

Debtor Westmoreland Coal Company (Name) Case number *(if known)*

11. Why is the case filed in *this* district?

Check all that apply:

☐ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other _____

Where is the property?

Number Street _____

_____

City _____ State _____ Zip Code _____

Is the property insured?

☐ No

☐ Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

☒ Funds will be available for distribution to unsecured creditors.

☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors

☐ 1-49	☐ 1,000-5,000	☐ 25,001-50,000
☐ 50-99	☐ 5,001-10,000	☐ 50,001-100,000
☐ 100-199	☒ 10,001-25,000	☐ More than 100,000
☐ 200-999		

15. Estimated assets[1]

☐ $0-$50,000	☐ $1,000,001-$10 million	☒ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☐ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☐ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

[1] The Debtors' estimated assets, liabilities, and number of creditors noted here are provided on a consolidated basis.

Debtor Westmoreland Coal Company
Name

Case number *(if known)*

16. Estimated liabilities

☐ $0-$50,000	☐ $1,000,001-$10 million	☐ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☒ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☐ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **10/09/2018**
MM/ DD / YYYY

✘ ***/s/ Michael G. Hutchinson*** **Michael G. Hutchinson**
Signature of authorized representative of debtor — Printed name

Title **Chief Executive Officer**

18. Signature of attorney

✘ ***/s/ Patricia B. Tomasco*** Date **10/09/2018**
Signature of attorney for debtor — MM/DD/YYYY

Patricia B. Tomasco
Printed name

Jackson Walker L.L.P.
Firm name

1401 McKinney Street, Suite 1900
Number Street

Houston **Texas** **77010**
City State ZIP Code

(713) 752-4200 **ptomasco@jw.com**
Contact phone Email address

01797600 **Texas**
Bar number State

Official Form 201A (12/15)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY,	)	Case No. 18-_____(___)
Debtor.	)	

Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is **001-11155**

2. The following financial data is the latest available information and refers to the debtor's condition on **August 31, 2018**

(a) Total assets $ **770,455,520**

(b) Total debts (including debts listed in 2.c., below) $ **1,431,617,093**

(c) Debt securities held by more than 500 holders

				Approximate number of holders:
secured ☐	unsecured ☐	subordinated ☐	$	
secured ☐	unsecured ☐	subordinated ☐	$	
secured ☐	unsecured ☐	subordinated ☐	$	
secured ☐	unsecured ☐	subordinated ☐	$	
secured ☐	unsecured ☐	subordinated ☐	$	

(d) Number of shares of preferred stock **0**

(e) Number of shares of common stock **18,788,532**[2]

Comments, if any:

3. Brief description of debtor's business:

We produce and sell thermal coal primarily to investment grade utility customers under long-term, cost-protected contracts. Our focus is primarily on mine locations which allow us to employ dragline surface mining methods and take advantage of close customer proximity through mine-mouth power plants and strategically located rail transportation.

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor: **None**

[2] As of September 6, 2018.

Fill in this information to identify the case:
United States Bankruptcy Court for the: ,Southern District of Texas (State)
Case number *(if known):* _____ Chapter 11

☐ Check if this is an amended filing

Rider 1
Pending Bankruptcy Cases Filed by the Debtor and Affiliates of the Debtor

On the date hereof, each of the entities listed below (collectively, the "Debtors") filed a petition in the United States Bankruptcy Court for the Southern District of Texas for relief under chapter 11 of title 11 of the United States Code. The Debtors have moved for joint administration of these cases under the case number assigned to the chapter 11 case of Westmoreland Coal Company.

- Westmoreland Coal Company
- Absaloka Coal, LLC
- Basin Resources, Inc.
- Buckingham Coal Company, LLC
- Dakota Westmoreland Corporation
- Daron Coal Company, LLC
- Harrison Resources, LLC
- Haystack Coal Company
- Oxford Conesville, LLC
- Oxford Mining Company - Kentucky, LLC
- Oxford Mining Company, LLC
- San Juan Coal Company
- San Juan Transportation Company
- Texas Westmoreland Coal Company
- WCC Land Holding Company, Inc.
- WEI-Roanoke Valley, Inc.
- Western Energy Company
- Westmoreland Coal Company Asset Corp.
- Westmoreland Coal Sales Company, Inc.
- Westmoreland Energy Services New York, Inc.
- Westmoreland Energy Services, Inc.
- Westmoreland Energy, LLC
- Westmoreland Kemmerer Fee Coal Holdings, LLC
- Westmoreland Kemmerer, LLC
- Westmoreland Mining LLC
- Westmoreland North Carolina Power LLC
- Westmoreland Partners
- Westmoreland Power, Inc.
- Westmoreland Resource Partners, LP
- Westmoreland Resources GP, LLC
- Westmoreland Resources Inc.
- Westmoreland San Juan Holdings, Inc.
- Westmoreland San Juan, LLC
- Westmoreland Savage Corporation
- Westmoreland Texas Jewett Coal Company
- Westmoreland-Roanoke Valley, LP
- WRI Partners, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY,	)	Case No. 18-_____(___)
Debtor.	)	

LIST OF EQUITY SECURITY HOLDERS[3]

Debtor	Equity Holders	Address of Equity Holder	Percentage of Equity Held
Westmoreland Coal Company	Cede & Co	55 Water Street New York, NY 10041	98.51%

[3] This list serves as the disclosure required to be made by the debtor pursuant to rule 1007 of the Federal Rules of Bankruptcy Procedure. All equity positions listed indicate the record holder of such equity as of the date of commencement of the chapter 11 case.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY,	)	Case No. 18-_____(___)
Debtor.	)	

CORPORATE OWNERSHIP STATEMENT

Pursuant to rules 1007(a)(1) and 7007.1 of the Federal Rules of Bankruptcy Procedure, the following are corporations, other than a government unit, that directly or indirectly own 10% or more of any class of the debtor's equity interest:

Shareholder	Approximate Percentage of Shares Held
Cede & Co	98.51%

Fill in this information to identify the case and this filing:
Debtor Name Westmoreland Coal Company
United States Bankruptcy Court for the: Southern District of Texas (State)
Case number (If known):

Official Form 202
Declaration Under Penalty of Perjury for Non-Individual Debtors 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets-Real and Personal Property (Official Form 206A/B)*
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)*
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)*
- ☐ *Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)*
- ☐ *Schedule H: Codebtors (Official Form 206H)*
- ☐ *Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)*
- ☐ Amended Schedule
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 50 Largest Unsecured Claims and Are Not Insiders (Official Form 204)*
- ☒ Other document that requires a declaration **List of Equity Security Holders and Corporate Ownership Statement**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

10/09/2018
MM/ DD/YYYY

☒ ***/s/ Michael G. Hutchinson***
Signature of individual signing on behalf of debtor

Michael G. Hutchinson
Printed name

Chief Executive Officer
Position or relationship to debtor

Fill in this information to identify the case:

Debtor name Westmoreland Coal Company, *et al.*

United States Bankruptcy Court for the: Southern District of Texas (State)

Case number *(If known)*: _____

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 50 Largest Unsecured Claims and Are Not Insiders 12/15

A list of creditors holding the 50 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 50 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim. If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff [1]	Unsecured Claim
1	Bureau of Indian Affairs Department of the Interior 1849 C Street, N.W., MS-4606-MIB Washington, DC 20240	Name: Hankie P. Ortiz, Deputy Bureau Director Phone: (202) 208-511 Fax: (202) 208-6334 Email: Hankie.Ortiz@Bia.gov	Royalties	Unliquidated			$1,800,000
2	Ohio Cat 3993 E. Royalton Rd. Broadview Heights, OH 44147	Name: Ken Taylor, President Phone: (440) 526-6200 Email: Ktaylor@Ohiocat.com	Trade Debt				$1,476,431
3	Paprzycki, Kevin A. Address On File	Name: Paprzycki, Kevin A. Phone: Redacted Email: Redacted	Severance	Contingent Unliquidated Disputed			$1,156,800
4	Minerals Management Service 1849 C Street NW, Mail Stop 5134 Washington, DC 20240	Name: Timothy Calahan Phone: (303) 231-3036 Email: Timothy.Calahan@Onrr.gov	Royalties	Unliquidated			$1,100,000
5	Nelson Brothers Mining Service 820 Shades Creek Parkway, Suite 2000 Birmingham, AL 35209	Name: Tim Zeli, Director - Direct Operations Phone: (205) 802-5305 Fax: (205) 414-2900 Email: Tzeli@Nelbro.com	Trade Debt				$992,331
6	Tractor & Equipment Co. 17035 W. Valley Hwy Tukwila, WA 98188	Name: Tim May, Vice President & CFO Phone: (425) 251-9829 Email: Tmay@Harnishgrp.com	Trade Debt				$399,477
7	Caterpillar Financial Services Corp 2120 West End Ave. Nashville, TN 37203-0001	Name: David Thomas Walton, VP Phone: (615) 341-1000 Email: Walton_David_T@Cat.com	Trade Debt				$374,626

[1] The Debtors reserve the right to assert setoff and other rights with respect to any of the claims listed herein.

	Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim. If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff [1]	Unsecured Claim
8	Wampum Hardware Company 636 Paden Road New Galilee, PA 16141	Name: Jerry Davis Phone: (724) 336-4501 Fax: (724) 336-3818 Email: Jdavis@Wampumhardware.com	Trade Debt				$362,269
9	Consol Mining Company, LLC CNX Center 1000 Consol Energy Drive, Suite 100 Canonsburg, PA 15317-6506	Name: Mitesh Thakkar, Director Phone: (724) 485-3300 Email: Miteshthakkar@Consolenergy.com	Royalties	Unliquidated			$350,000
10	Land Services USA, Inc. 1835 Market Street, Suite 420 Philadelphia, PA 19103	Name: M. Gordon Daniels, Esq., Principal and Chief Executive Officer Phone: (215) 563-5468 Fax: (215) 568-8219 Email: gdaniels@lsutitle.com	Trade Debt				$318,654
11	M and C Transportation LLC 39830 Barnesville Bethesda Rd., Bethesda, OH 43719	Name: Jeffrey W Crum, President Phone: (740) 484-4110	Trade Debt				$286,629
12	Conveyors & Equipment, Inc. 3580 South 300 West Salt Lake City, UT 84115	Name: John Morrison, Owner Phone: (801) 263-1843 Email: Morrisonj@Conveyequip.com	Trade Debt				$184,008
13	GCR Tires & Service 535 Marriott Drive Nashville, TN 37214	Name: John Vasuta, President, GCR Phone: (615) 937-1000 Fax: (615) 937-3621	Trade Debt				$174,742
14	Cravat Coal Co. 40580 Cadiz Piedmont Rd. Cadiz, OH 43907	Name: James Carnes, President Phone: (740) 968-1000 Fax: (740) 942-8449	Royalties	Unliquidated			$150,000
15	Wheeler Machinery Co. 4901 W 2100 S Salt Lake City, UT 84120-1227	Name: Bryan Campbell, President Phone: (801) 974-0511	Trade Debt				$145,937
16	Silver Spur Conveyor 578 Raven Road Raven, VA 24639	Name: Greg Smith, President Phone: (276) 596-9414 Fax: (276) 963-6921 Email: Silverspurbelt@Aol.com	Trade Debt				$144,140
17	Komatsu Financial Komatsu America Corp. 1701 Golf Road, Suite 1-100 Rolling Meadows, IL 60008	Name: Rod Schrader, Chairman And CEO Phone: (847) 437-5800 Email: Rschrader@Komatsuna.com	Trade Debt				$110,769
18	Columbus Equipment Co. 2329 Performance Way Columbus, OH 43207	Name: Zach O'Connor, Regional Manager Phone: (614) 443-6541 Fax: (614) 443-0297 Email: Zach@Columbusequipment.com	Trade Debt				$108,341
19	Montana-Dakota Utilities Co. 400 North Fourth Street Bismarck, ND 58501	Name: Ms. Nicole A. Kivisto, CEO Phone: (701) 222-7900 Fax: (701) 221-3933	Trade Debt				$90,544

	Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim. If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff [1]	Unsecured Claim
20	Rocky Mountain Power Po Box 26000 1033 Ne 6th Ave. Portland, OR 97256-0001	Name: Cindy Crane, CEO Phone: (888) 225-2611 Email: Cindy.Crane@Pacificorp.com	Trade Debt				$80,985
21	Holland & Hart LLP 2515 Warren Avenue, Suite 450 Cheyenne, WY 82001	Name: Matt Micheli, Partner Phone: (307) 778-4225 Email: Mjmicheli@Hollandhart.com	Trade Debt				$79,831
22	Bowles Rice LLP 600 Quarrier St. Charleston, WY 25301	Name: Paul E. Frampton, Partner Phone: (304) 347-1100 Fax: (304) 343-2867 Email: Pframpton@Bowlesrice.com	Trade Debt				$76,812
23	Honstein Oil And Distributing LLC 96 Road 4980 Bloomfield, NM 87413	Name: Jason Allee, VP of Operations Phone: (505) 632-5730 Email: Jason@Honsteinoil.com	Trade Debt				$73,724
24	Cincinnati Mine Machinery Co. 2950 Jonrose Ave. Cincinnati, OH 42539	Name: Ron Paolello, General Manager Phone: (513) 522-7777 Email: Ron@Cinimine.com	Trade Debt				$71,956
25	Monsanto Company 800 N Lindbergh Blvd. St. Louis, MO 63167	Name: Hugh Grant, CEO Phone: (314) 694-1000 Fax: (314) 694-8394	Trade Debt				$68,712
26	Minova USA Inc. 150 Summer Court Georgetown, KY 40324	Name: Bill Hutchinson, CEO Phone: (800) 626-2948 Fax: (502) 863-6805	Trade Debt				$66,227
27	Davis Graham & Stubbs 1550 17th Street Denver, CO 80202	Name: Debbie Schoonover, Executive Director Phone: (303) 892-9400 Fax: (303) 893-1379 Email: Debbie.Schoonover@Dgslaw.com	Trade Debt				$63,751
28	Cardwell Distributing, Inc. 8137 State Street Midvale, UT 84047	Name: Bill Rawson, CEO And President Phone: (801) 561-4251 Fax: (801) 561-9202	Trade Debt				$60,867
29	Rhino Energy LLC Rhino Resource Partners LP 424 Lewis Hargett Circle, Suite 250 Lexington, KY 40503	Name: Richard A. Boone, CEO Phone: (859) 389-6500 Email: Rboone@Rhinolp.com	Trade Debt				$54,601
30	Lykins Energy Solutions 5163 Wolfpen Pleasent Hill Rd. Milford, OH 45150	Name: D. Jeff Lykins, President/CEO Phone: (800) 875-8820 Fax: (513) 831-1428	Trade Debt				$54,374
31	Mesa Ready Mix Inc. 6895 Drinen Lane Farmington, NM 87402	Name: Mike Shavers, Director Phone: (505) 485-0035	Trade Debt				$52,098
32	Chromate Industrial 4060 East Plano Parkway Plano, TX 75074	Name: Debbie Bynum, CEO/President Phone: (214) 341-2122 Fax: (214) 348-7714	Trade Debt				$52,000

	Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim. If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff [1]	Unsecured Claim
33	Jennmar Corporation 258 Kappa Drive Pittsburgh, PA 15238	Name: Karl Anthony Calandra, EVP Phone: (412) 963-9071 Fax: (412) 963-9767 Email: Tcalandra@Jennmar.com	Trade Debt				$51,667
34	Holmes Limestone, Inc. 4255 State Route 39 Berlin, OH 44610	Name: Merle Mullet, President Phone: (330) 893-2310 Fax: (330) 893-2941	Royalties	Unliquidated			$50,000
35	Ohio Department of Natural Resources Division of Forestry 2045 Morse Rd., Building H Columbus, OH 43229	Name: James Zehringer, Director Phone: (614) 265-6565 Fax: (614) 262-2064 Email: Info@Ohiodnr.com	Royalties				$50,000
36	Mineral Trucking, Inc. 6848 County Road 201 Millersburg, OH 44654	Name: Jeff Zimmerly, Owner Phone: (330) 893-2068 Fax: (330) 893-2068	Trade Debt				$48,184
37	Komatsu Southwest 6101 Pan American W Freeway NE Albuquerque, NM 87109	Name: Grant Adams, President Phone: (505) 345-8383	Trade Debt				$46,126
38	Wirerope Works, Inc. 100 Maynard Street Williamsport, PA 17701	Name: Mr. Virgil R. Probasco, EVP Phone: (570) 326-5146 Fax: (570) 327-4274	Trade Debt				$43,376
39	Mine Site Technologies USA Inc. 13301 West 43rd Drive Golden Denver, CO 80403	Name: Lloyd Zenari, CEO Phone: (303) 951-0570 Email: L.Zenari@Mstglobal.com	Trade Debt				$42,855
40	William Albert, Inc. 1300 Cassingham Hollow Drive Coshocton, OH 43812	Name: William Albert, President Phone: (740) 622-3045 Email: William.Albert@Williamalbert.com	Trade Debt				$41,817
41	Clearfork Trucking 45640 Old Hopedale Rd Cadiz, OH 43907	Name: Bradford Davis, Sr., President Phone: (740) 942-4173	Trade Debt				$41,329
42	J & L Professional Sales Inc. 260 Meteor Circle Freedom, PA 15042	Name: Paul Wischmann, Principal Phone: (412) 788-4927	Trade Debt				$38,809
43	Acme Soil Remediation, Inc. 108 N. Behrend Ave., Suite A Farmington, NM 87401	Name: Theresa Simpson, Principal Phone: (505) 632-2195	Trade Debt				$38,646
44	EKS&H LLP 1445 Market Street, Suite 300 Denver, CO 80202	Name: Joe Adams, Lead Partner Phone: (303) 740-9400 Fax: (303) 740-9009 Email: Jadams@Eksh.com	Trade Debt				$38,513
45	Halifax County Public Utilities 26 N King Street Halifax, NC 27839	Name: Greg Griffin, Public Utilities Director Phone: (252) 583-1014 Fax: (252) 593-5014 Email: Griffing@Halifaxnc.com	Trade Debt				$38,073
46	Imaginit (Rand Worldwide) 11201 Dolfield Blvd., Suite 112 Owings Mills, MD 21117	Name: Larry Rychlak – President And Chief Executive Officer Phone: (508) 663-1411 Email: Lrychlack@Rand.com	Trade Debt				$37,645

	Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim. If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff [1]	Unsecured Claim
47	Adobe Systems Inc. 345 Park Avenue San Jose, CA 95110-2704	Name: Mark Garret Fax: (408) 536-6000 Email: Mgarret@Adobe.com	Trade Debt				$37,518
48	Michael Ramsey, Deceased, By and Through His Personal Representative, Donna Ramsey, on Behalf of the Estate and Heirs of Michael Ramsey c/o Edwards, Frickle, & Culver 1648 Poly Drive, Suite 206 Billings, MT 59102	Name: A. Clifford Edwards Phone: (406) 215-4735	Litigation	Contingent Unliquidated Disputed			Undetermined
49	Ohio Environmental Protection Agency 30 E. Broad Street, 25th Floor Columbus, OH 43215	Name: Craig W. Butler, Director Phone: (614) 644-2782 Fax: (614) 644-3184 Email: Craig.Butler@epa.ohio.gov	Litigation	Contingent Unliquidated Disputed			Undetermined
50	Pension Benefit Guaranty Corporation 1200 K Street, NW Washington, DC 20005	Name: W. Thomas Reeder, Director Phone: (202) 326-4020 Fax: (202) 326-4112 Email: Reeder.Thomas@pbgc.gov	Pension Liability	Unliquidated			Undetermined

WESTMORELAND COAL COMPANY

OFFICER'S CERTIFICATE

October 9th, 2018

The undersigned, solely in his capacity as an officer of Westmoreland Coal Company, a Delaware corporation (the "Company"), and not in his individual or any other capacity, and without personal liability, hereby certifies in the name and on behalf of the Company that attached hereto as Annex A is a true, correct and complete copy of the resolutions adopted by the board of directors of the Company, authorizing the Company to file voluntary petitions for relief commencing cases under chapter 11 of title 11 of the United States Code, sections 101, *et seq*.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned has executed this consent as of the date first written above.

By: _____
Name: Michael G. Hutchinson
Title: Interim Chief Executive Officer and Interim President

Annex A

Resolutions

[Attached]

Omnibus Resolutions of the Boards of Directors, Boards of Managers, Sole Managers, Members, Sole Member and Managers, Shareholders, Limited Partners, and General Partners

Dated as of October 9th, 2018

A meeting of the members of the board of directors (the "Board") of Westmoreland Coal Company (the "Company") was held on October 9th, 2018, via telephone conference, at which the following resolutions were adopted pursuant to the bylaws (as amended or amended and restated to date) of the Company and the laws of the state of Delaware:

Chapter 11 Filing

WHEREAS, the Board has considered presentations by the Company's management and the financial and legal advisors of the Company regarding the liabilities and liquidity situation of the Company, the strategic alternatives available to it, and the effect of the foregoing on the Company's business; and

WHEREAS, the Board has had the opportunity to consult with the management and the financial and legal advisors of the Company and fully consider each of the strategic alternatives available to the Company.

NOW, THEREFORE, BE IT,

RESOLVED, that in the judgment of the Board, it is desirable and in the best interests of the Company (including a consideration of its creditors and other parties in interest) that the Company shall be, and hereby is, authorized to file, or cause to be filed, voluntary petitions for relief (the "Chapter 11 Cases") under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in a court of proper jurisdiction (the "Bankruptcy Court") and any other petition for relief or recognition or other order that may be desirable under applicable law in the United States; and

RESOLVED, that the Chief Executive Officer, the President, the General Counsel, the Chief Operating Officer, the Chief Financial Officer, the Chief Restructuring Officer, any Senior Vice President, any Vice President, any Assistant Vice President, and any other duly appointed officer of the Company (each, an "Authorized Signatory" and collectively, the "Authorized Signatories"), acting alone or with one or more other Authorized Signatories be, and they hereby are, authorized, empowered, and directed to execute and file on behalf of the Company all petitions, schedules, lists and other motions, papers, or documents, and to take any and all action that they deem necessary or proper to obtain such relief, including, without limitation, any action necessary to maintain the ordinary course operation of the Company's business.

Restructuring Support Agreement

WHEREAS, in connection with the Chapter 11 Cases, the Company has engaged in good-faith negotiations with holders of (a) approximately 76.1% of the Term Loan (as defined herein), (b) approximately 57.9% of the Senior Secured Notes (as defined herein), and (c) approximately 79.1% of the Bridge Loan (as defined herein) (collectively, the "Ad Hoc

Group"), regarding the terms of a comprehensive restructuring as set forth in that certain Restructuring Support Agreement by and among the Company and the Ad Hoc Group, dated as of October 9th, 2018 (as may be amended in accordance with its terms, the "Restructuring Support Agreement").

NOW, THEREFORE, BE IT,

RESOLVED, that the Authorized Signatories be, and they hereby are, authorized to take all actions (including, without limitation, to negotiate and execute any agreements, documents, or certificates) necessary to enter into the Restructuring Support Agreement and to consummate the transactions contemplated thereby in connection with the Chapter 11 Cases and that the Company's performance of its obligations under the Restructuring Support Agreement hereby is, in all respects, authorized and approved.

Retention of Professionals

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized and directed to employ the law firm of Kirkland & Ellis LLP and Kirkland & Ellis International LLP (together, "Kirkland") as general bankruptcy counsel to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations, including filing any motions, objections, replies, applications, or pleadings; and in connection therewith, each of the Authorized Signatories, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed an appropriate application for authority to retain the services of Kirkland.

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized and directed to employ the firm Centerview Partners LLC ("Centerview") as financial advisor to, among other things, assist the Company in evaluating its business and prospects, developing a long-term business plan, developing financial data for evaluation by the Board, creditors, or other third parties, as requested by the Company, evaluating the Company's capital structures, responding to issues related to the Company's financial liquidity, and in any sale, reorganization, business combination, or similar disposition of the Company's assets; and in connection therewith, each of the Authorized Signatories, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed an appropriate application for authority to retain the services of Centerview.

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized and directed to employ the firm Alvarez & Marsal North America, LLC ("A&M"), as restructuring advisor to the Company to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, each of the Authorized Signatories, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed an appropriate application for authority to employ or retain the services of A&M.

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized and directed to employ the firm of Donlin, Recano & Company, Inc. ("DRC"), as notice and claims agent to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company' rights and obligations; and in connection therewith, each of the Authorized Signatories, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and cause to be filed appropriate applications for authority to retain the services of DRC.

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized and directed to employ any other professionals to assist the Company in carrying out its duties under the Bankruptcy Code; and in connection therewith, each of the Authorized Signatories, with power of delegation, is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers and fees, and cause to be filed an appropriate application for authority to retain the services of any other professionals as necessary.

RESOLVED, that each of the Authorized Signatories be, and they hereby are, with power of delegation, authorized, empowered and directed to execute and file all petitions, schedules, motions, lists, applications, pleadings, and other papers and, in connection therewith, to employ and retain all assistance by legal counsel, accountants, financial advisors, and other professionals and to take and perform any and all further acts and deeds that each of the Authorized Signatories deem necessary, proper, or desirable in connection with the Company's Chapter 11 Cases, with a view to the successful prosecution of the cases.

Cash Collateral & Debtor-in-Possession Financing

WHEREAS, the Company will obtain benefits from the Company's use of collateral, including cash collateral, as that term is defined in section 363 of the Bankruptcy Code (the "Cash Collateral"), which is security for certain prepetition secured creditors (collectively, the "Secured Creditors") party to:

> (a) that certain Credit Agreement, dated as of December 16, 2014, as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time, among the Company, as borrower, Wilmington Savings Fund Society, FSB, as the administrative agent, the lenders from time to time party thereto, and the guarantor parties thereto, as amended (the "Term Loan");
>
> (b) that certain indenture, dated as of December 16, 2014, as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time, among the Company, as issuer, and U.S. Bank National Association, as trustee and collateral agent, the lenders from time to time party thereto, and the guarantor parties thereto (the "Senior Secured Notes"); and
>
> (c) that certain Fourth Amendment to the Credit Agreement dated as of May 21, 2018, by and among the Company, certain lenders party thereto

and Wilmington Savings Fund Society, FSB as administrative agent (the "Bridge Loan").

WHEREAS, reference is made to that certain Debtor-In-Possession Credit Agreement (together with all exhibits, schedules, and annexes thereto, the "DIP Credit Agreement") dated as of, or about, the date hereof, by and among Westmoreland Coal Company and Westmoreland San Juan Holdings, LLC, as the "Debtor Borrowers" and each a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, Prairie Mines & Royalty ULC, as the "Non-Debtor Borrower" and, together with the Debtor Borrowers, the "Borrowers", each of the Company parties thereto (together with the Debtor Borrowers, the "Debtors"), Westmoreland Canadian Investment, LP, and Westmoreland Canada Holdings, Inc., as guarantors, the lenders party thereto from time to time (collectively, the "DIP Lenders"), and Wilmington Savings Fund Society, FSB, as Administrative Agent (the "DIP Agent");

WHEREAS, the Borrowers have requested that the DIP Lenders provide a senior secured debtor-in-possession $110,000,000 term loan facility to the Debtors (the "DIP Facility"); and

WHEREAS, the obligation of the DIP Lenders to make the extensions of credit to the Borrowers is subject to, among other things, the Company and the Non-Debtor Borrower entering into the DIP Credit Agreement and satisfying certain conditions in the DIP Credit Agreement; and

WHEREAS, the Company and the Non-Debtor Borrower will obtain benefits from the DIP Credit Agreement and it is advisable and in the best interest of the Company and the Non-Debtor Borrower to enter into the DIP Credit Agreement and each other DIP Loan Document (as defined in the DIP Credit Agreement) and to perform its obligations thereunder, including granting security interests in all or substantially all of its assets.

NOW, THEREFORE, BE IT RESOLVED, that the form, terms, and provisions of the DIP Credit Agreement, and the transactions contemplated by the DIP Credit Agreement (including, without limitation, the borrowings thereunder), the transactions contemplated therein, and the guaranties, liabilities, obligations, security interests granted, and notes issued, if any, in connection therewith, be and hereby are authorized, adopted, and approved; and

RESOLVED, that the Company and the Non-Debtor Borrower will obtain benefits from the DIP Credit Agreement and it is advisable and in the best interest of the Company and the Non-Debtor Borrower to enter into the DIP Credit Agreement and each other DIP Loan Document and to perform its obligations thereunder, including granting security interests in all or substantially all of its assets; and

RESOLVED, that the Company's and the Non-Debtor Borrower's execution and delivery of, and its performance of its obligations (including guarantees) in connection with the DIP Credit Agreement, are hereby, in all respects, authorized and approved; and further resolved, that each of the Authorized Signatories, acting alone or with one or more Authorized Signatories, is hereby authorized, empowered, and directed to negotiate the terms of and to execute, deliver, and perform under the DIP Credit Agreement and any and all other documents, certificates, instruments, agreements, intercreditor agreements, any amendment, or any other modification required to consummate the transactions contemplated by the DIP Credit Agreement in the name

and on behalf of the Company and the Non-Debtor Borrower, in the form approved, with such changes therein and modifications and amendments thereto as any of the Authorized Signatories may in his or her sole discretion approve, which approval shall be conclusively evidenced by his or her execution thereof. Such execution by any of the Authorized Signatories is hereby authorized to be by facsimile, engraved or printed as deemed necessary and preferable; and

RESOLVED, that the each of the Authorized Signatories, acting alone or with one or more Authorized Signatories, be, and hereby are, authorized, empowered, and directed in the name of, and on behalf of, the Company and the Non-Debtor Borrower to seek authorization to enter into the DIP Credit Agreement and to seek approval of the use of cash collateral pursuant to a postpetition financing order in interim and final form, and any Authorized Signatory be, and hereby is, authorized, empowered, and directed to negotiate, execute, and deliver any and all agreements, instruments, or documents, by or on behalf of the Company and the Non-Debtor Borrower, necessary to implement the postpetition financing, including providing for adequate protection to the Secured Creditors in accordance with section 363 of the Bankruptcy Code, as well as any additional or further agreements for entry into the DIP Credit Agreement and the use of cash collateral in connection with the Company's Chapter 11 Cases, which agreements may require the Company to grant adequate protection and liens to the Company's Secured Creditors and each other agreement, instrument, or document to be executed and delivered in connection therewith, by or on behalf of the Company pursuant thereto or in connection therewith, all with such changes therein and additions thereto as any Authorized Signatory approves, such approval to be conclusively evidenced by the taking of such action or by the execution and delivery thereof.

RESOLVED, that (i) the form, terms, and provisions of the DIP Credit Agreement and all other DIP Loan Documents to which the Company and the Non-Debtor Borrower is a party, (ii) the grant of security interests in, pledges of, and liens on all or substantially all of the assets now or hereafter owned by the Company and the Non-Debtor Borrower as collateral (including pledges of equity and personal property as collateral) under the DIP Loan Documents, (iii) the guaranty of obligations by the Company and the Non-Debtor Borrower under the DIP Loan Documents, from which the Company and the Non-Debtor Borrower will derive value, be and hereby are, authorized, adopted, and approved, and (iv) any Authorized Signatory or other officer of the Company is hereby authorized, empowered, and directed, in the name of and on behalf of the Company, to take such actions and negotiate or cause to be prepared and negotiated and to execute, deliver, perform, and cause the performance of, each of the transactions contemplated by the DIP Credit Agreement, substantially in the form provided to the Board, the DIP Loan Documents and such other agreements, certificates, instruments, receipts, petitions, motions, or other papers or documents to which the Company is or will be a party or any order entered into in connection with the Chapter 11 Cases (collectively with the DIP Credit Agreement, the "Financing Documents"), incur and pay or cause to be paid all related fees and expenses, with such changes, additions, and modifications thereto as an Authorized Signatory executing the same shall approve;

RESOLVED, that the Company, as debtor and debtor-in-possession under the Bankruptcy Code be, and hereby is, authorized, empowered, and directed to incur any and all obligations and to undertake any and all related transactions on substantially the same terms as contemplated under the Financing Documents (collectively, the "Financing Transactions"), including granting liens

on its assets to secure such obligations and the refinancing of the obligations outstanding pursuant to the Bridge Loan; and

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized, empowered, and directed in the name of, and on behalf of, the Company, as debtor and debtor in possession, to take such actions as in its discretion is determined to be necessary, desirable, or appropriate to execute, deliver, and file: (i) the Financing Documents and such agreements, certificates, instruments, guaranties, notices, and any and all other documents, including, without limitation, any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions, and extensions of any Financing Documents, necessary, desirable, or appropriate to facilitate the Financing Transactions; (ii) all petitions, schedules, lists, and other motions, papers, or documents, which shall in its sole judgment be necessary, proper, or advisable, which determination shall be conclusively evidenced by his/her or their execution thereof; (iii) such other instruments, certificates, notices, assignments, and documents as may be reasonably requested by the DIP Agent and other parties in interest; and (iv) such forms of deposit account control agreements, officer's certificates, and compliance certificates as may be required by the Financing Documents; and

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized, empowered, and directed in the name of, and on behalf of, the Company to file or to authorize the DIP Agent to file any Uniform Commercial Code ("UCC") financing statements, any other equivalent filings, any intellectual property or real estate filings and recordings, and any necessary assignments for security or other documents in the name of the Company that the DIP Agent deems necessary or convenient to perfect any lien or security interest granted under the Financing Documents, including any such UCC financing statement containing a generic description of collateral, such as "all assets," "all property now or hereafter acquired," and other similar descriptions of like import, and to execute and deliver, and to record or authorize the recording of, such mortgages and deeds of trust in respect of real property of the Company and such other filings in respect of intellectual and other property of the Company, in each case as the DIP Agent may reasonably request to perfect the security interests of the DIP Agent under the Financing Documents; and

RESOLVED, that each of the Authorized Signatories be, and they hereby are, authorized, empowered, and directed in the name of, and on behalf of, the Company to take all such further actions, including, without limitation, to pay or approve the payment of all fees and expenses payable in connection with the Financing Transactions and all fees and expenses incurred by or on behalf of the Company in connection with the foregoing resolutions, in accordance with the terms of the Financing Documents, which shall in their reasonable business judgment be necessary, proper, or advisable to perform the Company's obligations under or in connection with the Financing Documents or any of the Financing Transactions and to fully carry out the intent of the foregoing resolutions; and

RESOLVED, that each of the Authorized Signatories be, and hereby is, authorized, empowered, and directed in the name of, and on behalf of, the Company, to execute and deliver any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions, and extensions of the postpetition financing or any of the Financing Documents or to do such other things which shall in their sole judgment be necessary, desirable, proper, or advisable to

give effect to the foregoing resolutions, which determination shall be conclusively evidenced by his/her or their execution thereof.

General

RESOLVED, that in addition to the specific authorizations heretofore conferred upon the Authorized Signatories, each of the Authorized Signatories (and their designees and delegates) be, and they hereby are, authorized and empowered, in the name of and on behalf of the Company, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver, and file any and all such agreements, certificates, instruments, and other documents and to pay all expenses, including but not limited to filing fees, in each case as in such director's judgment, shall be necessary, advisable or desirable in order to fully carry out the intent and accomplish the purposes of the resolutions adopted herein.

RESOLVED, that the Board has received sufficient notice of the actions and transactions relating to the matters contemplated by the foregoing resolutions, as may be required by the organizational documents of the Company, or hereby waive any right to have received such notice.

RESOLVED, that all acts, actions, and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company, which acts would have been approved by the foregoing resolutions except that such acts were taken before the adoption of these resolutions, are hereby, in all respects, approved and ratified as the true acts and deeds of the Company with the same force and effect as if each such act, transaction, agreement, or certificate has been specifically authorized in advance by resolution of the Board.

RESOLVED, that each of the Authorized Signatories (and their designees and delegates) be, and hereby is, authorized and empowered to take all actions or to not take any action in the name of the Company with respect to the transactions contemplated by these resolutions hereunder, as such Authorized Signatory shall deem necessary or desirable in such Authorized Signatory's reasonable business judgment to effectuate the purposes of the transactions contemplated herein.

* * * * *

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY, *et al.*,[1]	)	Case No. 18-35672 (DRJ)
Debtors.	)	(Jointly Administered)

NOTICE OF (I) ENTRY OF ORDER CONFIRMING THE AMENDED JOINT CHAPTER 11 PLAN OF WESTMORELAND COAL COMPANY AND CERTAIN OF ITS DEBTOR AFFILIATES AND (II) OCCURRENCE OF THE PLAN EFFECTIVE DATE

TO ALL CREDITORS, INTEREST HOLDERS, AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on March 2, 2019, the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), entered an order [Docket No. 1561] (the "Confirmation Order") confirming the *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (with all supplements and exhibits thereto, the "Plan"), which was attached to the Confirmation Order as Exhibit A.[2]

PLEASE TAKE FURTHER NOTICE that the Plan Effective Date occurred on March 15, 2019.

PLEASE TAKE FURTHER NOTICE that pursuant to Article V.B of the Plan, any Proof of Claim with respect to Claims arising from the rejection of WLB Debtors' Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court and served on the Plan Administrator, no later than thirty (30) days after the effective date of the rejection of such Executory Contract or Unexpired Lease; *provided* that the WMLP Debtors shall not be required to file any such Proofs of Claim relating to the rejection of Executory Contracts or Unexpired Leases. **Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim were required to be but were not timely Filed**

[1] Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Cases on account of such Claim. Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the WLB Debtors, the WLB Debtors' Estates, or the property for any of the foregoing without the need for any objection by the WLB Debtors or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served and **actually received no later than fourteen (14) days after service of the WLB Debtors' proposed rejection of such Executory Contract or Unexpired Lease** by the Bankruptcy Court and the the following parties (the "Notice Parties"): (a) counsel for the WLB Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Gregory F. Pesce and Timothy R. Bow; (b) counsel to the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn.: Thomas Moers Mayer and Stephen D. Zide; (c) counsel to the Official Committee of Unsecured Creditors, Morrison & Foerster LLP, 250 West 55th Street New York, NY 10019, Attn: Lorenzo Marinuzzi, Esq., Todd M. Goren, Esq., and Jennifer L. Marines, Esq.; and (d) Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn.: Stephen Statham.

PLEASE TAKE FURTHER NOTICE that, except with respect to Administrative Claims that are Professional Fee Claims or DIP Facility Claims, and except as otherwise provided in Article II.A of the Plan, requests for payment of an Allowed Administrative Claim that arises after January 4, 2019, other than requests for payment of Administrative Claims arising in the ordinary course of business, must be Filed with the Bankruptcy Court and served on the WLB Debtors by the date that is thirty (30) days after the Plan Effective Date (the "Supplemental Administrative Claims Bar Date").[3] For the avoidance of doubt, solely to the extent Cure Costs are not paid on the Plan Effective Date, the counterparty to such Executory Contract and Unexpired Lease must file its Administrative Claim on or prior to the Supplemental Administrative Claims Bar Date, and such Administrative Claim shall be asserted only with respect to and in the amount of such unpaid Cure Costs. **HOLDERS OF ADMINISTRATIVE CLAIMS THAT ARE REQUIRED TO, BUT DO NOT, FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE CLAIMS BY THE SUPPLEMENTAL ADMINISTRATIVE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE CLAIMS AGAINST THE WLB DEBTORS, THEIR ESTATES, THE PURCHASER, OR THE PLAN ADMINISTRATOR,**

[3] Except with respect to Administrative Claims that are Professional Fee Claims or DIP Facility Claims, and except as otherwise provided in Article II.A of the Plan, the deadline for all requests for payment of Administrative Claims that arose on or prior to January 4, 2019, other than requests for payment of Administrative Claims arising in the ordinary course of business, was January 25, 2019.

AND SUCH ADMINISTRATIVE CLAIMS SHALL BE DEEMED COMPROMISED, SETTLED, AND RELEASED AS OF THE PLAN EFFECTIVE DATE.

PLEASE TAKE FURTHER NOTICE that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be filed with the Bankruptcy Court no later than thirty (30) days after the Plan Effective Date.

PLEASE TAKE FURTHER NOTICE that the terms of the Plan, the Plan Supplement, and the Confirmation Order are immediately effective and enforceable and deemed binding upon the WLB Debtors, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan, the Confirmation Order and any and all non-WLB Debtor parties to Executory Contracts and Unexpired Leases with the WLB Debtors.

PLEASE TAKE FURTHER NOTICE that the Plan, the Plan Supplement, the Confirmation Order, and copies of all documents filed in these chapter 11 cases are available free of charge by visiting www.donlinrecano.com/westmoreland or by calling the Debtors' restructuring hotline at (855) 252-2156. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: http://www.nysb.uscourts.gov.

[Remainder of Page Intentionally Left Blank]

Houston, Texas
March 15, 2019

/s/ Matthew D. Cavenaugh

Matthew D. Cavenaugh (Bar No. 24062656)
JACKSON WALKER LLP
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: mcavenaugh@jw.com

Conflicts Counsel to the WLB Debtors and Local Counsel to the Debtors and Debtors in Possession

James H.M. Sprayregen, P.C.
Michael B. Slade (Bar No. 24013521)
Gregory F. Pesce (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: james.sprayregen@kirkland.com
michael.slade@kirkland.com
gregory.pesce@kirkland.com

-and-

Edward O. Sassower, P.C.
Stephen E. Hessler, P.C. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: edward.sassower@kirkland.com
stephen.hessler@kirkland.com

-and-

Anna G. Rotman, P.C. (Bar No. 24046761)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
609 Main Street
Houston, Texas 77002
Telephone: (713) 836-3600
Email: anna.rotman@kirkland.com

Counsel to the Debtors and Debtors in Possession

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CONTACT DONLIN, RECANO & COMPANY, INC. BY CALLING (800) 499-8519.

Certificate of Service

I certify that on March 15, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: Westmoreland Coal Company, et al.,[1] Debtors.	Chapter 11 Case No. 18-35672 (DRJ) Jointly Administered

OBJECTION BY PUGET SOUND ENERGY, INC., PORTLAND GENERAL ELECTRIC COMPANY, PACIFICORP, AND AVISTA CORPORATION TO JOINT CHAPTER 11 PLAN OF WESTMORELAND COAL COMPANY AND CERTAIN OF ITS DEBTOR AFFILIATES

Puget Sound Energy, Inc., a Washington corporation ("***PSE***"), Portland General Electric Company, an Oregon corporation ("***PGE***"), PacifiCorp, an Oregon corporation ("***PacifiCorp***"), and Avista Corporation, a Washington corporation ("***Avista***") (collectively, the "***Northwest Colstrip Owners***," or "***Public Utilities***") object to confirmation of the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates* ("***Plan***") [Docket No. 788, Exhibit A]. As set forth in greater detail herein, the Public Utilities submit that the Plan fails to satisfy section 1129(a)(1) of title 11 of the United States Code ("***Bankruptcy Code***") because the Plan grants the WLB Debtors[2] and the stalking horse bidder ("***Purchaser***") the post-confirmation right to delay final decision on which contracts shall be assumed and assigned to the Purchaser and which contracts the WLB Debtors will reject, notwithstanding the fact that section 365(d)(2) of the Bankruptcy Code limits the time period within which the WLB Debtors

[1] Due to the large number of debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

[2] Capitalized terms not otherwise defined in this paragraph shall have the meaning ascribed to them below or in the WLB Debtors' Plan.

may make their decision to assume or reject an executory contract to a date prior to confirmation. The Plan also fails to satisfy section 1129(a)(3) of the Bankruptcy Code because it was not proposed in good faith. Indicia of lack of good faith include: (i) depriving the Public Utilities of sufficient notice of the WLB Debtors' ***final*** decision to assume or reject the Coal Supply Agreement insofar as (a) the WLB Debtors filed a notice on January 19, 2019 in which they disclosed their decision (subject to further revision) to reject the Coal Supply Agreement notwithstanding explicit statements in the Plan that all coal supply contracts relating to "Core Assets" would be assumed, and (b) the Plan authorizes the WLB Debtors and the Purchaser to move contracts from assignment to rejection schedules within days of the sale closing after the Plan has already been confirmed; (ii) failing to disclose the identity of the Purchaser and the Purchaser's connections with the lending group; and (iii) failing to articulate any valid business justification for rejecting a profitable contract.

BACKGROUND

1. Westmoreland Coal Company ("***WCC***") and certain of its direct and indirect subsidiaries (collectively with WCC, the "***Debtors***"), including Western Energy Company ("***WECO***"), filed voluntary petitions for chapter 11 bankruptcy relief on October 9, 2018 and have continued to operate their businesses and affairs as debtors and debtors in possession.

2. On December 14, 2018, WCC and certain of the Debtors including WECO ("***WLB Debtors***") filed the *Notice of Filing of Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of its Debtor Affiliates*, and attached thereto as *Exhibit A* the Plan (the "***Plan***"). Dkt. No. 788. The hearing on confirmation of the Plan is scheduled for February 13, 2019 ("***Confirmation Hearing Date***").

A. The Coal Supply Agreement Between the Co-Owners and WECO Is a Critical Contract to the Ongoing Operations of the Rosebud Mine

3. Collectively, the Public Utilities hold a 70% ownership interest in two coal-fired steam-electric generating plants near Colstrip, Montana commonly referred to as Unit 3 and Unit

4 (the "***Colstrip Plants***"). The remaining 30% ownership interest is held by North Western Corporation ("***North Western***") and Talen Montana, LLC ("***Talen***," and together with the Public Utilities and North Western, the "***Co-Owners***").

4. The Co-Owners source all of their supply of coal for the Colstrip Plants from WECO, which owns the Rosebud mine ("***Rosebud Mine***"), pursuant to the Amended and Restated Coal Supply Agreement ("***ARCSA***") and Amendment No. 2 to the Coal Transportation Agreement ("***CTA***"). The Co-Owners and WECO are collectively referred to herein as the "***Parties***." But for the ARCSA, the Parties would have no need for the CTA. The ARCSA contained provisions to resolve and release all claims for final reclamation costs associated with the Rosebud Mine. Together, the ARCSA and CTA, along with any amendments thereto and stipulations and settlements relating thereto are referred to herein as the "***Coal Supply Agreement***."[3]

5. The history of the Parties' commercial relationship extends over 38 years, back to when the Co-Owners and their predecessors constructed the Colstrip Plants, and importantly, continued into the Debtors' post-petition period. Throughout this history, the Co-Owners (and their predecessors) have been WECO's only significant customer, a fact that remains true today. But for the Co-Owners' purchase of coal from WECO, the Rosebud Mine would have no buyer for most of its coal reserves. Likewise, if the Co-Owners shut down the Colstrip Plants, the Rosebud Mine, which is located in a remote area of Montana without adequate railroad coal loading and offloading facilities, would have a very difficult task of selling coal at competitive prices to new customers. In this way, WECO is a captive seller. Moreover, the Co-Owners currently have a permit that prevents them from burning coal from a mine other than the Rosebud Mine at the Colstrip Plant.[4] Therefore, even if the Co-Owners could buy coal from

[3] Due to confidentiality concerns, the ARCSA and CTA are being filed under seal contemporaneously with this objection.

[4] The permit is found at http://deq.mt.gov/Portals/112/Air/AirQuality/Documents/ARMpermits/OP0513-14.pdf

another source, they could not process it at the Colstrip Plants under their current permit.

6. As of the time of this filing, there is approximately 11 months remaining on the Coal Supply Agreement. In an effort to extend the Coal Supply Contract into 2020 and beyond, the Co-Owners have been engaged in ongoing negotiations with WECO to extend its term or otherwise enter into a new coal supply agreement with WECO's successor. The Parties' failure to reach agreement on terms to extend the Coal Supply Agreement, as of the date of this filing, does not otherwise affect the validity and enforceability of the Coal Supply Agreement. Nor does it affect the Coal Supply Agreement's profitability to WECO and its estate, which is ***ensured*** by the Coal Supply Agreement's existing "cost-plus" pricing structure. *Id.*

B. The WLB Debtors' Plan Seeks Authorization for WECO to Delay Final Decision on Rejection or Assumption and Assignment of the Coal Supply Agreement to the Purchaser Until *After* Confirmation

7. From early on in the case, the Rosebud Mine was identified by the WLB Debtors as one of the "Core Assets." *See* Dkt. No. 54 (Declaration of Jeffrey S. Stein, Ex. A); Dkt. No. 208 (Bidding Procedures Motion). Likewise, the Public Utilities expressed concern over their ability to generate electricity from the Colstrip Plants if the Rosebud Mine shut down, informing the Court that "contingency planning needs to begin immediately, or otherwise NWCO [Public Utilities] could be faced with insufficient runway to respond to a material breach by WECO." *Limited Objections by Puget Sound Energy, Inc. Portland General Electric Company, PacifiCorp, and Avista Corporation to Certain "First Day" Motions,* Dkt. 255, ¶ 7.

8. Not only does the WLB Debtors' Plan identify the Rosebud Mine as one of the "Core Assets," but the Plan also provides that the WLB Debtors will assume and assign all coal supply agreements to the Stalking Horse Bidder or Successful Bidder. Thus, the Public Utilities had every good-faith reason to believe that the WLB Debtors would assume and assign the Coal Supply Agreement to the Purchaser so as to ensure that the Parties, and ultimately the Purchaser, had sufficient runway to negotiate a new supply contract effective as of January 1, 2020.

9. Meanwhile, the Public Utilities have continued to perform under the Coal Supply Agreement, including engaging in good faith negotiations with WECO over the terms of a new coal supply agreement for 2020 and beyond, even though the Public Utilities realize that WECO will likely not be the owner of, nor will be operating, the Rosebud Mine by 2020.

10. These negotiations for a new agreement or extension of the Coal Supply Agreement continued until the Public Utilities learned—merely a week ago—that WECO had made a decision—albeit with a caveat that is not countenanced by the Bankruptcy Code—to reject the Coal Supply Agreement, notwithstanding the fact that the ongoing negotiations have absolutely nothing to do with the Coal Supply Agreement, but rather involve negotiating an extension or new agreement after the existing Coal Supply Agreement expires at the end of 2019. *See* Dkt. Nos. 1102 (Plan Supplement), 1104 (Notice Regarding Executory Contracts and Unexpired Leases To Be Rejected Pursuant to the Plan ("***Rejection Notice***")).

11. The Rejection Notice provides in part that:

- all Executory Contracts and Unexpired Leases that are not being assumed in connection with the Sale Transaction are automatically rejected as of the Plan Effective Date;
- the WLB Debtors' decision to assume or reject Executory Contracts ***is subject to revision***;
- the WLB Debtors are proposing to reject Executory Contracts that are not listed on the Assigned Contracts Schedule, which was attached to and filed with the Rejection Notice as Exhibit A;
- if the Successful Bidder identifies executory contracts that it decides to assume in connection with the Sale Transaction, the WLB Debtors may supplement the Assumed Contracts and Leases List ***at any time before the closing of the Sale***; and
- the WLB Debtors reserve the right to reject executory contracts ***up until the Plan Effective Date***.

12. Pursuant to the Rejection Notice, the WLB Debtors have provided the Co-Owners with notice that they have decided to reject the Coal Supply Agreement. However, their decision to reject is materially caveated in that it remains subject to revision, as the WLB Debtors are seeking this Court's approval of the Plan that allows them to add and remove contracts prior to and up until the sale closing and Plan Effective Date.

13. On January 21, 2019, the WLB Debtors filed a Notice of Cancellation of Auction and Designation of Successful Bidder, which identified the Stalking Horse Bidder as the Purchaser. Dkt. No. 1112. However, nowhere in the public record have the WLB Debtors disclosed the identity of the Purchaser, nor disclosed which lenders among the lending group have participated in the Purchaser's "credit bid."

14. In fact, under the Plan and Sale Transaction Documents, the Purchaser has the right to add and remove prepetition executory agreements between counterparties and the WLB Debtors up until the closing of the sale transaction. The Coal Supply Agreement between the Parties is not listed on the Rejection Notice as one of the contracts that will be assumed and assigned to the Purchaser, and thus it will be automatically rejected as of the Plan Effective Date, unless the WLB Debtors decide to assume the contract during the post-confirmation, pre-Plan Effective Date period.

OBJECTION

I. The Plan Does Not Comply with Section 1129(a)(1)

15. Section 365(d)(2) entitles a debtor to reject or assume an executory contract prior to confirmation of a plan. This entitlement is not unfettered. It is limited by two considerations. First, the decision on assumption and rejection must be made prior to confirmation so that creditors understand how their prepetition contractual rights with the debtor will be affected by the Plan. *See Fla. Dep't of Rev. v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 46 (2008) ("[T]he ***decision*** whether to reject a contract or lease must be made ***before*** confirmation." (second emphasis added)); *In re Tex. Health Enters. Inc.*, 72 F. App'x 122, 128 (5th Cir. 2003) ("Further, an executory contract must be assumed prior to confirmation of the debtor's plan of reorganization." (citing 11 U.S.C. § 365(d)(2)).[5] Second, the debtor's decision is subject to the

[5] While bankruptcy courts have confirmed plans that permit post-confirmation assumption or rejection, generally speaking either: (i) the plans in those cases did not drawn an objection on this issue (*see, e.g., In re Sherwin Alumina Co.*, No. 16-20012 (DRJ), Dkt. No. 1178 (Debtors' Modified Joint Chapter 11 Plan) at Art. V.A, Dkt No. 1181 (Debtors' Memorandum of Law in Support of Confirmation) at ¶ 94, and Dkt. No. 1194 (Order Confirming Plan) (Bankr. S.D. Texas 2017)), or (ii) the cases were decided prior to *Piccadilly* (*e.g., In re Greater Se. Cmty. Hosp. Corp.*, 327 B.R. 26, 33-35 (Bankr. D.D.C. 2005) (allowing for post-confirmation rejection of an assumed contract if terms could not be reached); *In re Gunter Hotel Assocs.*, 96 B.R. 696, 700-01 (Bankr. W.D. Tex. 1988) (allowing a

review of the Bankruptcy Court in the event objections are raised to the debtor's decision.

16. Moreover, section 1123(b)(2), which authorizes a debtor to address executory contract treatment in the plan itself, is subject to section 365, and thus must be interpreted in concert with the requirements of section 365(d)(2). 11 U.S.C. § 1123(b)(2). Read together, sections 365(d)(2) and 1123(b)(2) require a chapter 11 debtor-in-possession to assume or reject an executory contract before or at the time of the confirmation of a plan. In other words, this Court has no authority to confirm a chapter 11 plan that does not, fully and finally, resolve the debtor's treatment of executory contracts at the time of the confirmation hearing.[6] *In re O'Connor*, 258 F.3d 392, 400 (5th Cir. 2001) ("In a Chapter 11 case, the trustee may assume or reject an executory contract at any time before plan-confirmation, 11 U.S.C. § 365(d)(2), or, subject to § 365, the plan may provide for the assumption or rejection of any executory contract not previously rejected. 11 U.S.C. § 1123(b)(2). The requisite bankruptcy court approval for assumption or rejection must appear either in an order or as part of the plan-confirmation. 11 U.S.C. § 365(a).").[7] The WLB Debtors' Plan fails to comply with sections 365 and 1123 of the

---

licensing agreement to be rejected after confirmation)). In one case that was decided only months after *Piccadilly*, the court failed to consider *Piccadilly's* interpretation of section 365(d)(2). *DJS Props., L.P. v. Simplot*, 397 B.R. 493, 499-501 (D. Idaho 2008) (allowing a partnership agreement to be assumed or rejected after confirmation). To the extent there are chapter 11 cases in which Bankruptcy Courts have confirmed plans over creditors' objections to authorizing the debtor to reject or assume post-confirmation, the Public Utilities respectfully submit that those cases should not have been confirmed because they do not comply with section 1129(a)(1).

[6] Requiring debtors to assume or reject at or prior to confirmation is consistent with the U.S. Senate's stated goals upon enactment of section 365 in the Bankruptcy Reform Act of 1978. *See* S. Rep. No. 95-989, at 59 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5845 ("Subsection (d) places time limits on assumption and rejection. In a liquidation case, the trustee must assume within 60 days (or within an additional 60 days, if the court, for cause, extends the time). If not assumed, the contract or lease is deemed rejected. In a rehabilitation case, the time limit is not fixed in the bill. However, if the other party to the contract or lease requests the court to fix a time, the court may specify a time within which the trustee must act. ***This provision will prevent parties in contractual or lease relationships with the debtor from being left in doubt concerning their status vis-a-vis the estate***." (emphasis added)).

[7] Nor should this Court entertain any argument by the WLB Debtors that their Plan complies with section 365(d)(2) because it requests that this Court establish the Plan's Effective Date or the closing of the sale transaction as the outside date for the WLB Debtors to render a determination on assumption or rejection of certain executory contracts. Such an expansive reading of this Court's power ignores the phrase "before the confirmation of a plan." Interpreting section 365(d)(2) to authorize the Court to establish a period of time for rejection or assumption that includes the post-confirmation period effectively rewrites the Bankruptcy Code section to read as follows: "the trustee may assume or reject an executory contract at any time but the court, on the request of any party to such contract or lease, may order the trustee to determine without a specified period of time whether to assume or reject

Bankruptcy Code because it authorizes post-confirmation rejection, assumption, or assumption and assignment of executory contracts, notwithstanding the Public Utilities' objection.

II. The Plan Does Not Comply with Section 1129(a)(3) Because It Has Not Been Proposed in Good Faith

A. The Plan Imposes Significant Risks and Costs on Counterparties to Executory Contracts with No Notice and No Meaningful Remedy

17. The WLB Debtors' Plan, filed on December 14, 2018, expressly provided that coal supply contracts relating to mines included in the Core Assets purchased by the Purchaser are automatically "deemed assumed and assigned to the Purchaser on the Plan Effective Date." Plan, Art. V.A. Yet, merely one week before the deadline to object to confirmation, and in the middle of protracted negotiations with WECO over an extension of the Coal Supply Agreement,[8] the WLB Debtors filed the Rejection Notice, which disclosed WECO's decision to reject the Coal Supply Agreement, notwithstanding the undisputed fact that the Rosebud Mine sells all or substantially all of its coal to the Co-Owners under a "cost-plus" contract. This is the opposite of good faith. For this reason alone, the Plan cannot be confirmed.

18. Moreover, the Public Utilities constructed the Colstrip Plants approximately 38 years ago for the very purpose of buying coal from the Rosebud Mine. It is undisputed that the Co-Owners' ability to run the Colstrip Plants depends upon a steady supply of coal from the Rosebud Mine. Likewise it is undisputed that the Co-Owners have been the WLB Debtors' only significant customer for its coal over the past 38 years. Accordingly, the WLB Debtors' insistence that they can, with no notice, move the Coal Supply Agreement from one schedule to another after confirmation, and in doing so, cut off a critical supply of coal to the Co-Owners is an unreasonable position that should not be sanctioned. In addition, providing a contract

---

. . . ." This is not what section 365(d)(2) of the Bankruptcy Code says, and therefore this cannot be what it means.

[8] The substance of the commercial negotiations is confidential. As a result, the Public Utilities are unable to provide the Court at this time with details of the negotiations that they believe would further bolster the facts and arguments set forth herein. The Public Utilities are willing to waive the confidentiality requirement for the limited purpose of the WLB Debtors and the Public Utilities providing the Court, under seal, with information about the commercial negotiations for purposes of determining the merits of the relief the WLB Debtors are seeking and considering the Public Utilities' objections. The Public Utilities believe that the consent of the WLB Debtors and the other Co-Owners are needed for such waiver.

counterparty who learns that the WLB Debtors have decided, ***after the Plan has already been confirmed***, to reject its contract with the right to object to the decision is hardly a meaningful remedy to the injustice levied on the contract counterparty, especially if the sale closes and the Plan goes effective during that 14-day window.

19. Furthermore, the WLB Debtors' Plan seeks *nunc pro tunc* relief for post-confirmation decisions to reject or assume executory contracts. The Plan provides:

> Each pre- or post-Confirmation rejection, assumption, or assumption and assignment of an Executory Contract or Unexpired Lease pursuant to Article V of the Plan will be legal, valid and binding upon the applicable WLB Debtor and all other parties to such Executory Contract or Unexpired Lease, as applicable, all to the same extent as if such rejection, assumption, or assumption and assignment had been effectuated ***pursuant to an appropriate order of the Court entered before the Confirmation Date under section 365 of the Bankruptcy Code***."

Plan, Art. X.I(1)(i) (emphasis added). That the WLB Debtors are proposing no notice to critical counterparties like the Co-Owners of their decisions to move contracts from a rejection to an assumption schedule or vice versa, and yet want their decisions to be retroactive so as to comply with the plain letter of the Bankruptcy Code further evidences the absence of good faith.

B. WECO's Decision to Reject the Coal Supply Agreement Should Be Reviewed Under a Heightened Standard

20. Without the Coal Supply Agreement, the Public Utilities will not be able to operate the Colstrip Plants, which generate power that each of the Public Utilities then uses to provide electricity to their respective customers in Oregon and Washington. Because the WLB Debtors' rejection of this contract will affect the Public Utilities, each of which is governed by the Oregon or Washington Public Utility Commission, this Court should hold the WLB Debtors' decision to a heightened standard, and not to the business judgment test. *Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511 (5th Cir. 2004).

21. In *Mirant*, the Fifth Circuit Court of Appeals established a more stringent standard for the rejection of an executory contract involving the wholesale purchase of electricity, holding that the Bankruptcy Court must consider a higher standard than business judgment before authorizing the rejection of an electricity purchase contract, reasoning that "use

of the business judgment standard would be inappropriate in this case because it would not account for the public interest inherent in the transmission and sale of electricity." *Id.* at 525.

22. In its instructions upon remand, the Fifth Circuit described the higher "public interest" standard under which a court "would authorize rejection of an executory power contract only if the debtor can show that it 'burdens the estate, [ ] that, after careful scrutiny, the equities balance in favor of rejecting' that power contract, and that rejection of the contract would further the Chapter 11 goal of permitting the successful rehabilitation of debtors." *Mirant*, 378 F.3d at 525 (brackets in original) (quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 526-27 (1984)). "[C]ourts should carefully scrutinize the impact of rejection upon the public interest and should, inter alia, ***ensure that rejection does not cause any disruption in the supply of electricity to other public utilities or to consumers***." *Id.* (emphasis added) (citing *Bildisco*, 465 U.S. at 527). Because the WLB Debtors' decision to reject the Coal Supply Agreement has a direct impact on the Public Utilities, which are responsible for providing electricity to customers in Oregon and Washington, the public interest standard should be applied to attempts by the WLB Debtors to reject it.

C. Even Under the Business Judgment Test, Rejection Should Be Denied

23. The Public Utilities submit that the WLB Debtors cannot establish (1) that there has been a good business reason for the "bait and switch" deployed on the Co-Owners of the Colstrip Plants merely weeks before the Confirmation Hearing Date by deciding to reject the Coal Supply Agreement and disclosing that it would be assumed and assigned to the Purchaser, and (2) how the rejection damage claims that the Co-Owners ultimately file in this case may dilute the recoveries anticipated by the unsecured creditors. For these reasons, the WLB Debtors' decision does not pass the business judgment test.

24. In this case, a decision to reject the Coal Supply Agreement is not rational given that the Rosebud Mine is a significant asset of the WLB Debtors that is essential to consummation of the Plan, and the Coal Supply Agreement is critical to the mine's operation. Similarly, there is no rational business justification for risking the loss of the Co-Owners as

customers. As described by the Disclosure Statement, the Rosebud Mine's proven and probable coal reserves represent more than three-quarters of the total proven and probable coal reserves at all of WLB Debtors' mines,[9] making the Rosebud Mine by far the most valuable WLB Debtor asset. Additionally, because the Colstrip Plants are sited adjacent to the Rosebud Mine, which cuts down transportation costs significantly compared to other potential buyers, and furthermore, because the Co-Owners purchase nearly all of the coal sold at the Rosebud Mine, the Co-Owners are critical, irreplaceable customers.

25. In short, the Rejection Notice's failure to include the Coal Supply Agreement as a contract that will be assigned to the Purchaser is not credible because there is no justification for rejecting it, and strikes the Public Utilities as nothing more than a litigation tactic to drive the Public Utilities to accept unreasonable commercial terms on the new contract that is supposed to take effect in 2020.[10] This is especially true given the Coal Supply Agreement is a "cost-plus" agreement, and is *per se* profitable for WECO. Because of the contract's pricing structure, it is implausible for the WLB Debtors to argue that the agreement is a burden on WECO's bankruptcy estate. Thus, even under the business justification test, this Court cannot approve the WLB Debtors' rejection of the Coal Supply Agreement.

26. On the other hand, rejection of the Coal Supply Agreement will cause significant hardship on the Public Utilities. Because their permit only authorizes them to burn coal from the Rosebud Mine, without Rosebud coal the Public Utilities will be unable to generate power from the Colstrip Plants. Ultimately, the extent of the Public Utilities' rejection damage claims will be driven in part by how long it may take the Public Utilities to obtain a new permit, as well as

[9] *See* Disclosure Statement, Art. III.A(2) (The Rosebud Mine's disclosed 241 million tons of provable and probable coal reserves comprise 75.9% of the provable and probable coal reserves disclosed at all of WLB Debtors' mines.).

[10] The Public Utilities reserve the right to seek documents and information from the WLB Debtors that address the following questions, all of which are relevant to WECO's business judgment: (i) What factors did the WLB Debtors consider or not consider when they proposed the Plan that included a provision stating that all coal supply agreements would be assumed? (ii) What factors did the WLB Debtors consider or not consider when they decided to reject the Coal Supply Agreement, and when was this decision made and in consultation with whom? and (iii) Did the WLB Debtors consider the effects on the WLB Debtors' estates that rejection would have on general unsecured creditors' recoveries when they made their decision?

whether the Co-Owners can procure coal from other sources to the extent they obtain a new permit.

III. The Public Utilities Reserve the Right to Assert Other Objections at Confirmation Relating to the Coal Supply Agreement

27. To the extent the Public Utilities identify other objections to the Plan in advance of the Confirmation Hearing Date, they reserve their rights to supplement this objection. Without any limitation on the foregoing, the Public Utilities reserve all rights to incorporate any of the Co-Owners' objections to confirmation as their own, and further reserve all rights to contest any attempt by the WLB Debtors to treat as severable any agreements that were intended to be treated as integrated.

CONTESTED MATTER

28. Pursuant to Bankruptcy Rule 9014, confirmation of the Plan is a contested matter and the Public Utilities reserve all rights to seek discovery and present evidence at the confirmation hearing.

///

///

///

///

///

///

///

///

///

///

CONCLUSION

29. WHEREFORE, the Public Utilities respectfully request that the Court deny confirmation of the Plan and grant such other and further relief as the Court deems just and proper.

DATED: January 25, 2019
Portland, Oregon

Respectfully submitted,

STOEL RIVES LLP

/s/ Oren Buchanan Haker

Oren Buchanan Haker, OR Bar No. 130162
Stoel Rives LLP
760 SW Ninth, Suite 3000
Portland, OR 97205
Telephone: (503) 294-9338
Facsimile: (503) 220-2480
Email: oren.haker@stoel.com

Mark E. Hindley, UT Bar No. 07222
Stoel Rives LLP
201 Main St #1100
Salt Lake City, UT 84111
Telephone: (801) 578-6947
Facsimile: (801) 578-6999
Email: mark.hindley@stoel.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
WESTMORELAND COAL COMPANY, *et al.*[1]	§	**Case No. 18-35672 (DRJ)**
Debtors.	§	**(Jointly Administered)**

LIMITED OBJECTION OF TALEN MONTANA, LLC
TO CONFIRMATION OF JOINT CHAPTER 11 PLAN OF
WESTMORELAND COAL COMPANY AND CERTAIN OF ITS DEBTOR AFFILIATES

Talen Montana, LLC ("**Talen**"), by and through its undersigned counsel, hereby submits this objection (the "**Objection**") to confirmation of the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 788] (the "**Plan**"), filed by the WLB Debtors (as such term is used in the Plan). In support of the Objection, Talen respectfully states as follows:

Preliminary Statement

1. Talen operates a coal-fired power plant located east of Billings, Montana (the "**Colstrip Plant**"), which it co-owns with Puget Sound Energy, Inc., Portland General Electric Company, Avista Corporation, PacifiCorp, and NorthWestern Corporation (collectively, the "**Co-Owners**" and together with Talen, the "**Buyers**"). Talen is the sole operator of the Colstrip Plant, and employs over 300 employees, many of whom reside in Colstrip, Montana—a town with a population of less than 2,500 people.

[1] Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein (collectively herein "**Debtors**"). A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

2. Talen and the Co-Owners are effectively the exclusive purchasers of coal that Western Energy Company ("**WECO**"), a WLB Debtor, mines and sells from its coal mine in Rosebud County, Montana (the "**Rosebud Mine**"), adjacent to the Colstrip Plant. WECO is the Buyers' sole supplier of coal for operations of the Colstrip Plant, and has been since the 1970s.

3. WECO and the Buyers purchase and deliver coal pursuant to three long-term agreements for the sale and transportation of coal: (a) that certain *Coal Purchase and Sale Agreement*, dated as of March 21, 2007 (the "**U12 Coal Supply Agreement**"), (b) that certain *Amended and Restated Coal Supply Agreement*, dated as of August 24, 1998 (the "**U34 Coal Supply Agreement**"), and (c) that certain *Coal Transportation Agreement*, dated as of July 10, 1981, (together with the U12 Coal Supply Agreement and U34 Coal Supply Agreement, each as amended, supplemented, or modified, the "**Colstrip Coal Supply Agreements**").[2] Notwithstanding the WLB Debtors' numerous comments about the importance of their coal supply agreements and an explicit provision in the Plan that was served on stakeholders for solicitation providing for the assumption and assignment of the coal supply agreements to the WLB Debtors' purchasers, the WLB Debtors have recently indicated that they now intend to reject the Colstrip Coal Supply Agreements. Yet, the WLB Debtors have not met their burden for rejecting these agreements, as they have failed to articulate any legitimate business justification for doing so.

4. Nor can they. This is not a situation where a debtor has made a difficult, but reasonable business decision with which a counterparty simply disagrees. Rather, here, there is simply ***no*** possible legitimate business reason for the WLB Debtors to rid themselves of the Colstrip Coal Supply Agreements, as was clearly reflected in the Plan circulated for vote. The

[2] This Objection focuses on the U34 Coal Supply Agreement, attached hereto as **Exhibit A**, given the context of the commercial negotiations surrounding that contract. The general mechanics of the U12 Coal Supply Agreement are materially similar to those described herein with respect to the U34 Coal Supply Agreement.

WLB Debtors are not seeking to reject unprofitable contracts that burden their estates. To the contrary, the Colstrip Coal Supply Agreements are profitable contracts that ***guarantee*** WECO's profitability, as they are "cost-plus" agreements under which the Buyers pay WECO's annual costs of mining operations, a return on WECO's capital investment, and per-ton profit fees.

5. Instead, it appears that the WLB Debtors are threatening rejection and the withholding of vital coal to these captive Buyers to extract what in Talen's view are extremely unreasonable terms from them in the context of ongoing commercial negotiations focused on extending the U34 Coal Supply Agreement beyond its December 31, 2019 expiration date.[3] The terms reached under these coercive circumstances would be binding on the parties for many years, but at the very least would reduce actual operational time of the Colstrip Plant by a significant amount by virtue of inflated costs. Critically for the Buyers, the Colstrip Plant currently has one source of coal—WECO's Rosebud Mine—and the Rosebud mine has only one logical buyer of coal—the Colstrip Plant. This monopolistic situation, involving an important product affecting the public interest—coal for power for electricity for, among other things, warmth in the winter—creates an ability for WECO to squeeze the Buyers for greater and greater profits, potentially leaving the Buyers with no choice but to agree to pay exorbitant ransom prices for many years for this vital, single-source commodity. Such a situation could lead to a drastic curtailment of operations at the Colstrip Plant or potentially accelerate a permanent shutdown.

6. With the commercial negotiations over the extension being stuck, it is no coincidence that WECO has now threatened to reject these profitable agreements. The evidence

[3] The substance of the commercial negotiations is confidential. As a result, Talen is unable to provide the Court at this time with details of the negotiations that it believes would further bolster the facts and arguments set forth herein. Talen is willing to waive the confidentiality requirement for the limited purpose of the WLB Debtors, Talen, and the Co-Owners providing the Court, under seal, with information about the commercial negotiations for purposes of determining the merits of the relief the WLB Debtors are seeking.

will make plain that, rather than using rejection for a legitimate business purpose, the WLB Debtors are simply seeking to exert economic leverage on Talen and the Co-Owners and further increase their profits on ***already*** profitable contracts. It is a strategy that has threatened the continuing short-term and long-term operation of the Colstrip Plant, and has also put hundreds of employees (both at the Colstrip Plant and the Rosebud Mine) and the town of Colstrip at risk. By comparison, the as-of-yet-unidentified returns to WECO or its successor do not begin to justify such a strategy.

7. Indeed, the WLB Debtors' strategy also exposes WECO or its successor to significant risk of being unable to sell coal and satisfy its obligations. The parties depend on one another for coal supply and purchase. Their interdependence is not only contractual—[redacted]—but is also an economic and practical reality: the Rosebud Mine is adjacent to the Colstrip Plant, and both facilities were designed exclusively for one another. In fact, the Rosebud Mine was owned by one of the original owners of the Colstrip Plant. As described below in more detail, the Rosebud Mine (and thus any purchaser of the Rosebud Mine) lacks the ability to sell significant quantities of coal to third parties (*i.e.*, parties other than Talen and the Co-Owners) except at great cost, if at all possible.

8. In any event, WECO has not demonstrated any potential benefit from rejecting the Colstrip Coal Supply Agreements – by selling to third parties or otherwise, let alone benefits that would justify putting at risk the significant profits the WLB Debtors currently receive under the Colstrip Coal Supply Agreements. These are not the quintessential burdensome contracts a debtor typically seeks to shed in bankruptcy; quite the opposite.

Therefore, the WLB Debtors have not, and cannot, demonstrate that rejecting the Colstrip Coal Supply Agreements is a valid exercise of business judgment.

9. Further, even if the WLB Debtors were justified in rejecting the Colstrip Coal Supply Agreements on business or policy grounds, due to their convoluted Plan documents and mixed messages, they have failed to provide Talen (and the Co-Owners), or other creditors that would get diluted by new large, material rejection damage claims, the requisite notice for such rejection. As a matter of due process, the Bankruptcy Code and the Bankruptcy Rules require that (a) the WLB Debtors provide contract counterparties with sufficient notice as to whether the WLB Debtors will assume or reject their executory contracts and (b) the Plan that is sent to all creditors for solicitation, along with the disclosure statement, provides accurate information on key elements affecting creditors. The Plan clearly and explicitly states that the Colstrip Coal Supply Agreements will be assumed and assigned pursuant to the Plan. (Plan Art. V. Sec. A.) This is consistent with the WLB Debtors' representations throughout these cases that these agreements "are the lifeblood of [the WLB Debtors'] business." Oct. 9, 2018 Hr'g Tr. at 58:9–10 [Docket No. 134]. Yet, despite that Plan language, the WLB Debtors have now omitted the Colstrip Coal Supply Agreements from the lists of assumed contracts and leases filed in these cases (collectively, the "**Assumed Contracts and Leases Lists**").[4]

10. When pressed recently about the discrepancy between the Plan and the Assumed Contracts and Leases Lists, counsel to the WLB Debtors provided mixed messages on whether the Colstrip Coal Supply Agreements will or will not be assumed and assigned pursuant

[4] *See Notice to Contract Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases*, Ex. A (the "**Initial Assumed List**") [Docket No. 874]; *Plan Supplement for the Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the "**Plan Supplement**"), Ex. A [Docket No. 1102]; *Supplemental Notice of (A) Executory Contracts and Unexpired Leases to Be Assumed or Assumed and Assigned by Westmoreland Coal Company and Certain of Its Debtor Affiliates Pursuant to the Plan, (B) Cure Costs, If Any, and (C) Related Procedures in Connection Therewith*, Ex. A (the "**Supplemental Assumed List**") [Docket No. 1103].

to the Plan as written, alluding to assumption of the agreements being subject to the ongoing commercial negotiation between WECO and the Buyers relating to the extension of those agreements. Counsel to the WLB Debtors this week confirmed that the current intent is to reject the Colstrip Coal Supply Agreements notwithstanding the Plan language to the contrary. This ambiguity has left Talen with no choice but to object to the WLB Debtors' purported decision to reject the Colstrip Coal Supply Agreements.

11. As set out herein, there are multiple reasons not to authorize rejection of the Colstrip Coal Supply Agreements.

12. First, the Plan states that the WLB Debtors will assume and assign the Colstrip Coal Supply Agreements, consistent with representations the WLB Debtors have made to the Court, the creditors, and the public since they filed for chapter 11, including in their first day Coal Contract Performance Motion (as defined below). The WLB Debtors should not be permitted to manufacture uncertainty at this late juncture as to the otherwise clear and explicit language in the Plan in an attempt to exert leverage over Talen and the Co-Owners. Nor should the WLB Debtors be permitted to make any changes to the Plan at this eleventh hour after solicitation is complete and the objection deadline has passed. Enforcing the Plan's plain language is particularly important here given the WLB Debtors' recent settlement with the Creditors' Committee (defined below), whose "meaningful distribution" negotiated on behalf of unsecured creditors would be significantly diluted by a rejection of the Colstrip Coal Supply Agreements.

13. Second, the WLB Debtors cannot meet their burden of proof to justify rejection of the Colstrip Coal Supply Agreements. Put simply, rejection would not benefit the estate. There is no sound business justification for rejection, which could lead to significant

rejection damage claims diluting the recovery to general unsecured creditors, and the balance-of-equities test that applies in this situation pursuant to binding precedent from the Fifth Circuit Court of Appeals weighs against rejection. *See Mirant Corp. v. Potomac Electric Power Co. (In re Mirant Corp.)*, 378 F.3d 511 (5th Cir. 2004). The profitable nature of the Colstrip Coal Supply Agreements, the somewhat unusual monopolistic relationship between buyer and seller, the lack of any evidence of benefit to the estate from rejection, and the clear inference (which Talen believes the evidence will support) that the WLB Debtors are using the power of rejection to extract ransom pricing – not just for the remaining term of the agreement but on an extension that would last for many years – demonstrate that this is the rare case where rejection is not supported by a debtor's business judgment. The fact that what is at stake here – coal for electricity – is a vital public good and that rejection would put the operations of the Colstrip Plant and its hundreds of employees at risk (let alone the employees of the Rosebud Mine, which might no longer have a customer for its coal) should make the Court all the more reluctant to approve this risky tactic, especially when applying the *Mirant* balance-of-equities test.

14. Third, a rejection of the Colstrip Coal Supply Agreements would render the WLB Debtors unable to meet the feasibility standard for confirmation of the plan as to WECO given the uncertainty that WECO or its successor will be able to sell any coal and pay its costs and expenses absent assumption of the Colstrip Coal Supply Agreements.

15. Accordingly, Talen respectfully requests that the Court require that any order confirming the Plan (a "**Confirmation Order**") be conditioned upon inclusion of language in such order providing that the Colstrip Coal Supply Agreements are assumed and assigned pursuant to the Plan, consistent with the Plan that has been on file for months.

16. In the alternative, if the Court allows the WLB Debtors to reject the Colstrip Coal Supply Agreements, Talen respectfully requests that the Court condition such rejection upon the WLB Debtors' agreement to allow for an adequate transition period to wind down the Colstrip Coal Supply Agreements in light of the equities of the situation, including the inability of Talen to buy coal from an alternate source in the near-term.

Background

A. Prepetition Relationship between WECO, Talen, and the Co-Owners

17. Talen's primary asset is the Colstrip Plant, which sits immediately next to the WLB Debtors' Rosebud Mine. The Colstrip Plant consists of four separate electric generating units and related equipment.

18. WECO has been and continues to be the exclusive coal supplier for the Colstrip Plant, which was built on the premise of a symbiotic relationship between WECO and the Buyers—the Colstrip Plant would run on coal from the Rosebud Mine and the Rosebud Mine would be dedicated to supplying coal to the Colstrip Plant. Indeed, when the Colstrip Plant first began operations, the original operator of the plant—Montana Power Company—also owned the Rosebud Mine. To that end, the Colstrip Plant was designed specifically to burn coal from the Rosebud Mine and certain environmental permits of the Colstrip Plant mandate the use of coal from the Rosebud Mine.

19. The Buyers (and their predecessors) have purchased coal from WECO under some form of the Coal Supply Agreements since the 1970s. This relationship is mutually beneficial to both sides; [redacted]

20. As the WLB Debtors explained in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 54] (the "**First Day Declaration**"), their business model is to operate mines in niche coal markets, such as Colstrip, Montana, where they are able to enter into long-term, protected coal supply contracts that "take advantage of customer proximity and strategically located rail transportation." (First Day Declaration at ¶ 11.)

21. The WLB Debtors gain their "competitive advantage" because many of their buyers' power plants—including the Colstrip Plant—are specifically designed to use their coal. (First Day Declaration at ¶¶ 11, 14.) Further, the WLB Debtors' proximity to those plants reduces their transportation costs compared to other potential suppliers that would otherwise have to ship in coal via truck or train from longer distances. (*Id.*) Accordingly, in the context of the Rosebud Mine, it is not currently legally permissible for the Colstrip Plant to burn coal from another source under its environmental permits or operationally possible for the Colstrip Plant to receive coal deliveries via train. In turn, the Buyers designed and built their delivery infrastructure to receive coal only from WECO, rather than from other sources at longer distances by rail or truck. Likewise, the Rosebud Mine was designed to deliver coal only to the Buyers (at the Colstrip Plant), with whom WECO has entered into long-term, exclusive coal supply agreements. This symbiotic relationship has worked for over 40 years, and the Buyers had no reason to believe it would not continue into the future in the form of mutually advantageous extensions of the Colstrip Coal Supply Agreements.

B. History of U34 Coal Supply Agreement

22. On July 2, 1980, before "Units 3 & 4" of the Colstrip Plant became operational, WECO and the Buyers entered into a predecessor Coal Supply Agreement (the "**Original Coal Supply Agreement**"). (*See* U34 Coal Supply Agreement, at Recitals ¶ D.)

Relying on the original agreement and "the assurances of a dependable supply of coal from the Sellers," the Buyers constructed Units 3 & 4. (*Id.* at Recitals ¶ A.) Between 1981 and 1987, the parties amended the Original Coal Supply Agreement three times, and, in 1998, the parties re-negotiated an amended agreement to "align it better" with the parties' economic interests. (*Id.* at Recitals ¶ E.) The parties eventually executed the U34 Coal Supply Agreement, effective January 1, 1998 and with a term lasting through December 31, 2019. (*Id.* § 3.1.)

23. The U34 Coal Supply Agreement is a manifestation of the parties' interdependence, described above. [redacted]

24. As a result of this mutual interdependence, the Colstrip Plant does not have the physical infrastructure or legal authority to obtain coal from another source without substantial time, capital expenditures, and environmental permit amendments. WECO currently delivers coal to the Colstrip Plant either by conveyor belt or by truck. Thus, the Colstrip Plant has never had a need for facilities capable of unloading coal from rail cars, and no such facilities

exist today. WECO, in turn, does not have a rail loading facility capable of handling the volume of coal sold to the Colstrip Plant.

25. The Colstrip Coal Supply Agreements are plainly not a burden on WECO. To the contrary, the pricing structure of the Colstrip Coal Supply Agreements guarantees WECO's profitability, even when its costs increase. The pricing structure is "cost-plus," [redacted] In short, the Buyers pay for virtually ***everything*** under the Coal Supply Agreements and then pay WECO an additional profit. [redacted]

C. Negotiations over Extension to U34 Coal Supply Agreement

26. The term of current U34 Coal Supply Agreement is scheduled to expire at the end of 2019. In light of that, the parties have engaged in periodic, on-and-off, and sometimes contentious negotiations since 2012 regarding an extension to the contract term. The parties were engaged in such negotiations prior to the WLB Debtors' bankruptcy filing, and while those discussions resumed postpetition in November 2018, the parties have not yet been able to reach an agreement, in large part because WECO's negotiation position changed dramatically postpetition. Notwithstanding the highly profitable nature of the U34 Coal Supply Agreement to WECO and the fact that the Buyers are the only customers with the practical ability to purchase the volumes of coal being sold under the U34 Coal Supply Agreement, WECO has insisted on

what in Talen's view are unreasonable changes in the U34 Coal Supply Agreement beyond a simple extension of its term, which demands the Buyers have refused.

27. Having been unable to achieve these demands at the bargaining table, WECO apparently now seeks to use the Bankruptcy Code's rejection power, and the Buyers' captive status, not to reject an unprofitable and burdensome contract, but rather as economic leverage to impose terms on the Buyers that WECO could not obtain outside of bankruptcy. (All this notwithstanding explicit Plan language providing for assumption of these very contracts.) The threat is simple: if you do not agree to this exorbitant and uneconomic pricing—not just for the term of the contract, but for many years beyond that term—we may not ship you coal and you will not be able to operate your plant. Accordingly, Talen submits this Objection to confirmation, which it plans to supplement after full discovery—which has been served on the WLB Debtors simultaneously herewith—has been conducted.

D. WECO's Chapter 11 Filing and Postpetition Actions

28. On October 9, 2018, the WLB Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). In connection with the commencement of these chapter 11 cases, the WLB Debtors filed the First Day Declaration, with a copy of the Plan Term Sheet annexed thereto as Exhibit B. Among other things, the Plan Term Sheet contemplates a chapter 11 plan premised on the sale of the WLB Debtors' "Core Assets," with an ad hoc group of the WLB Debtors' secured creditors (the "**Ad Hoc Group**") serving as the stalking horse purchaser. (Plan Term Sheet at 3–4.) The Plan Term Sheet expressly defines the term "Core Assets" to include "substantially all of the assets owned by the Colstrip Seller and used in the Colstrip Business as specifically identified in the Purchase and Sale Agreement, including the Colstrip Assumed Contracts . . . [which] include[s] ***all of the contracts, supply agreements, joint venture agreements, operating and joint operating***

agreements, leases, and other written obligations of the Colstrip Seller relating to the Colstrip Business, as set forth on a schedule to the Purchase and Sale Agreement." (Plan Term Sheet at 4–5.) In short, the Plan Term Sheet contemplates the assumption and assignment of the Colstrip Coal Supply Agreements.

29. On the same day, the WLB Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to Enter into and Perform Under Coal Sale Contracts in the Ordinary Course Of Business* (the "**Coal Contract Performance Motion**") [Docket No. 15]. Pursuant to the Coal Contract Performance Motion, the WLB Debtors sought emergency relief to continue performing under their existing coal sale contracts, such as the Colstrip Coal Supply Agreements, noting that "Performance under the Coal Sale Contracts represents a core and critical part of the Debtors' operations because coal sales generate virtually all of the Debtors' revenues." (Coal Contract Performance Motion at ¶ 6.)

30. On October 18, 2018, the WLB Debtors filed the *Motion of Westmoreland Coal Company and Certain of Its Subsidiaries for Entry of an Order (I) Authorizing Westmoreland Coal Company and Certain Debtor Affiliates to Enter into and Perform under the Stalking Horse Purchase Agreement, (II) Approving Bidding Procedures with Respect to Substantially All Assets, (III) Approving Contract Assumption and Assignment Procedures, (IV) Scheduling Bid Deadlines and an Auction, (V) Scheduling Hearings and Objection Deadlines with Respect to the Disclosure Statement and Plan Confirmation, and (VI) Approving the Form and Manner of Notice Thereof* [Docket No. 208], seeking approval of certain bidding and other procedures (collectively, the "**Bidding Procedures**") in connection with a sale of the WLB Debtors' Core Assets. On November 15, 2018, the Court entered an order approving the Bidding Procedures (the "**Bidding Procedures Order**") [Docket No. 519].

31. On October 25, 2018, the WLB Debtors filed the *Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* [Docket No. 294] and the *Disclosure Statement for Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (as amended, the "**Disclosure Statement**") [Docket Nos. 293, 789]. Relevant to Talen, the Plan expressly provided:

> ***[N]otwithstanding anything to the contrary in the Plan***, to the extent any . . . ***contracts for the*** purchase, ***sale***, transportation or reclamation ***of coal*** . . . relating to the mines included in the Core Assets and Transferred Non-Core Assets to which any of the WLB Debtors is a party as of the Plan Effective Date are deemed to be, and treated as though they are, Executory Contracts or Unexpired Leases, such leases or contracts ***shall automatically be deemed assumed and assigned to the Purchaser on the Plan Effective Date***. (Plan, Art. V. Sec. A.) (emphasis added).

32. The Plan also included generic procedures for the assumption, assignment, and rejection of other contracts and leases, (*see generally* Plan, Art. V), as did the Bidding Procedures approved by the Court. (*See* Bidding Procedures Order at ¶ 9.) None of those procedures referred to the provision of the Plan deeming the coal sale contracts automatically assumed and assigned.

33. On December 19, 2018, the WLB Debtors publicly filed financial projections for coal sales revenues through 2028. *See* Westmoreland Coal Company, Current Report (Form 8-K) (Dec. 19, 2018). Within those projections, the WLB Debtors describe, albeit preliminarily, stable revenues from U.S. coal sales through 2022. *See id.*, Ex. 99.1 at 9. Upon information and belief, these projections assume continuation of the Colstrip Coal Supply Agreements at the current contract prices, at least during the term of the Colstrip Coal Supply Agreements.

34. On December 21, 2018, the WLB Debtors filed the Initial Assumed List on the docket. None of the Colstrip Coal Supply Agreements were listed on the Initial Assumed List.

35. On January 18, 2019, the WLB Debtors filed the Plan Supplement and the Supplemental Assumed List. Again, none of the Colstrip Coal Supply Agreement were listed on the Plan Supplement or the Supplemental Assumed List.

36. Accordingly, in early January 2019, and then again on January 22, 2019, counsel for Talen contacted counsel to the WLB Debtors for clarity as to whether the Colstrip Coal Supply Agreements were being assumed and assigned pursuant to the Plan (as the Plan expressly provides). In response to the January 22 email inquiry, WECO's counsel stated that the Colstrip Coal Supply Agreements were "intentionally left off the assumed list, as the Debtors ***currently intend to reject those agreements*** as of the Plan Effective Date, ***subject to the ongoing business discussions about those agreements***."[5] The very next day, WECO advised the Buyers' counsel that WECO was terminating negotiations and would not entertain any further offers from the Buyers. As such, months after the Plan was filed providing explicitly and unambiguously that the Colstrip Coal Supply Agreements were being assumed and assigned, the Debtors are suggesting the existence of wiggle room in that Plan language, forcing Talen to file this Objection.

37. On January 22, 2019, the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") filed the *Second Stipulation and Agreed Order (A) Extending Challenge Period Termination Date in Final DIP Order and (B) Resolving Possible Confirmation Objections Pursuant to Settlement Term Sheet* (the "**GUC Settlement**") [Docket

5 *See* January 22, 2019 Email Correspondence (emphasis added), attached to this Objection as **Exhibit B**.

No. 1115]. Pursuant to the GUC Settlement, the Creditors' Committee, on behalf of the WLB Debtors' unsecured creditors, agreed to support the Plan in exchange for, among other things, $3,250,000 to the class of general unsecured claims. As would be expected to ensure that their constituents' recovery from the settlement is not diluted, the GUC Settlement provides for protections against increasing the number of contracts to be rejected by the WLB Debtors.

Argument

A. WLB Debtors Must Confirm that Plan Will Assume Colstrip Coal Supply Agreements

1. Plain Language of Plan Confirms that Colstrip Coal Supply Agreements Will Be Assumed and Assigned

38. Section A of Article V of the Plan provides in no uncertain terms that any contracts for the purchase or sale of coal relating to mines in the Core Assets shall automatically be deemed assumed and assigned on the Plan Effective Date "notwithstanding anything in the Plan to the contrary." This provision alone provides sufficient clarity as to the treatment of the Colstrip Coal Supply Agreements. The Court should require the WLB Debtors to uphold the expectations they set for the Buyers and their other stakeholders.

39. Yet, notwithstanding this plain language, the WLB Debtors have suggested to Talen's counsel the possibility that they may treat the Colstrip Coal Supply Agreements as rejected ***on a post-confirmation basis*** by virtue of their non-inclusion on the Assumed Contracts and Leases Lists. Presumably the WLB Debtors threaten rejection by relying on the more general language in the Bidding Procedures authorizing the WLB Debtors to assume or reject certain contracts on a post-confirmation basis. (*See* Bidding Procedures Order at ¶ 9.f.) But as a matter of contract interpretation, the WLB Debtors' position must fail.

40. First, under New York contract law[6] and case law in this Circuit, where there is a conflict between two provisions of an agreement, the specific controls over the general. *See Cnty. of Suffolk v. Alcorn*, 266 F.3d 131, 139 (2d Cir. 2001) (applying N.Y. law, "[i]t is axiomatic that courts construing contracts must give specific terms and exact terms . . . greater weight than general language.") (internal citations omitted); *United States Postal Service v. American Postal Workers Union, AFL-CIO*, 922 F.2d 256 (5th Cir. 1991), *cert. denied*, 502 U.S. 906 (1991). Here, Section A of Article V of the Plan very specifically sets forth the treatment of the Colstrip Coal Supply Agreements as a subset of executory contracts: they will be assumed and assigned ***notwithstanding anything to the contrary in the Plan***. Thus, that provision must control over the more general provisions of the Bidding Procedures, which are only generally incorporated into the Plan.

41. Second, contractual provisions should not be read to deprive such provisions of any meaning. *LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir. 2005). Here, that is precisely what the WLB Debtors' preferred interpretation would accomplish. If the WLB Debtors were able to rely on the general provisions to change their mind at any time with respect to the treatment of the Colstrip Coal Supply Agreements, the entirety of Section A of Article V would have no meaning whatsoever. Accordingly, based on a textual analysis of the Plan (and ancillary documents), the Court should require the WLB Debtors to confirm that the Colstrip Coal Supply Agreements will be assumed and assigned.

42. To the extent the WLB Debtors attempt to change this key provision of the Plan at the literal eleventh hour, they should not be permitted to do so. As discussed below, various stakeholders, including Talen, and potentially the Creditors' Committee, have relied on

[6] The Plan is governed by the laws of the State of New York. (Plan, Art. I Sec. D.)

the Plan provision providing for assumption of the Coal Supply Agreements. Notice must mean something, and if they change the Plan provision now, notice will be insufficient.

2. WLB Debtors' Overtones of Possibly Rejecting Colstrip Coal Supply Agreement Are Inequitable and a Misuse of Assumption/Rejection Process

43. Even if the Court finds ambiguity in the text of the Plan, or that the WLB Debtors can change a key term of the Plan post-solicitation on a whim, the Court should require the WLB Debtors to confirm that the Colstrip Coal Supply Agreements are being assumed and assigned pursuant to the Plan based on the equities of the case. "The Bankruptcy Code is designed to shield debtors from creditor harassment, but it should not be used as sword by debtors to deprive creditors of that to which they are properly entitled." *In re Choate*, 184 B.R. 270, 273 (Bankr. N.D. Tex. 1995); *see also In re CBBT, L.P.*, No. 11–30036–H3–11, 2011 WL 1770438, at *1 (Bankr. S.D. Tex. May 9, 2011) (finding that using chapter 11 solely to force a counterparty to accept more favorable contract terms was a misuse of the bankruptcy process). Given the context of the commercial negotiations on extensions to the Colstrip Coal Supply Agreement, the profitable nature of those agreements to WECO, and the monopolistic power that WECO holds within the context of the Rosebud Mine, the WLB Debtors' attempt to squeeze Talen and the Co-Owners at the last minute to take advantage of the situation is impermissible. This behavior would be bad enough if their aims had been apparent from the beginning, but is worsened by having done so without providing those parties the notice to which they are entitled regarding the treatment of their executory contracts under the Plan and sending out a plan for solicitation that specifically said the opposite.

44. Particularly problematic is the fact that Talen is being squeezed not only for ransom pricing during the term of the contract, but apparently the WLB Debtors are seeking to extract ransom pricing for an extension of the U34 Coal Supply Agreement for a number of

years beyond its current term. Given the importance of coal to operations of the Colstrip Plant (the plant literally cannot operate without coal from the Rosebud Mine), the WLB Debtors could theoretically squeeze Talen by charging multiples of market prices for the coal – two, three, four, or even ten times WECO's cost of producing the coal – and lock those prices in for many years.

45. The situation here is different from ordinary contract rejection cases, and this is not an appropriate use of the Bankruptcy Code by a debtor. The Bankruptcy Code and the Bankruptcy Rules were designed to ensure that the benefits bestowed upon unfortunate debtors are balanced with the due process rights of non-debtor stakeholders. *See, e.g., Matter of Cybernetic Servs., Inc.*, 94 B.R. 951, 953 (Bankr. W.D. Mich. 1989) (holding that bankruptcy rules governing contract assumption recognized and protected due process rights of parties in interest). Bankruptcy courts are courts of equity, and the WLB Debtors should not be permitted to use the Court and the powers that are granted by the Bankruptcy Code for inequitable, unfair, and sharp practices. The WLB Debtors' eleventh hour tactics are antithetical to the principles underlying the chapter 11 process.

B. To Extent Plan Contemplates Rejection of Colstrip Coal Supply Agreements, WLB Debtors Cannot Meet Standard of Proof to Justify Rejection

46. The WLB Debtors bear the burden of proving that the rejection of an executory contract is warranted. *See In re Pilgrim's Pride Corp.*, 403 B.R. 413, 429 (Bankr. N.D. Tex. 2009). To satisfy that burden of proof, a debtor must at minimum show that rejecting the executory contract would satisfy the "business judgment test." *In re Pisces Energy, LLC*, Nos. 09–36591–H5–11, 09–36593–H5–11, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009) (citing *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043 (4th Cir. 1985)). Where the treatment of an executory contract gives rise to material public policy implications, however, a debtor must further demonstrate that the contract burdens the debtor's

estate and the balance of equities weighs in favor of rejection. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 526–27 (1984); *Mirant*, 378 F.3d at 525. The WLB Debtors have not carried their burden of satisfying either standard.

1. Rejection of Colstrip Coal Supply Agreement Fails Business Judgment Test

47. Ordinarily, to reject an executory contract, a debtor must show that doing so "will be advantageous to the bankruptcy estate and the decision will be based on sound business judgment." *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009); *see also Pisces*, 2009 WL 7227880, at *6. Where a debtor can articulate a legitimate business justification, its decision to reject an executory contract will not be altered in the absence of a showing bad faith or an abuse of business discretion. *Idearc*, 423 B.R. at 162.

48. Nonetheless, under the business judgment test, a debtor is still subject to limitations on when it may reject an executory contract. Courts are vigilant to ensure that a debtor is not simply hiding behind the shield of the Bankruptcy Code as a means to engage in conduct that would be improper in a non-bankruptcy context. *Pilgrim's Pride*, 403 B.R. at 426. Indeed, a debtor is a fiduciary that must administer its case and conduct its business "in a fashion amenable to scrutiny to be expected from creditor and court oversight." *Id.* A debtor should exercise its powers consistent with the purposes of the Bankruptcy Code.

49. Courts consider a variety of factors in determining whether rejection of an executory contract is in the sound business judgment of the debtor. For example, as articulated in *In re G Survivor Corp.*, 171 B.R. 755, 758 (Bankr. S.D.N.Y. 1994), courts may examine (a) whether the contract burdens the debtor's estate financially; (b) whether the debtor can show real economic benefit resulting from the rejection; and (c) whether rejection would result in a large claim against the estate. Other courts have also focused on whether rejection would benefit the general unsecured creditors, sometimes noting that the primary beneficiaries of rejection

should be the debtor's general unsecured creditors. *See, e.g.*, *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665 (9th Cir. 2007); *In re Stable Mews Assocs., Inc.*, 41 B.R. 594 (Bankr. S.D.N.Y. 1984).

50. Here, far from being burdensome, the cost-plus, profitable Colstrip Coal Supply Agreements are valuable to WECO's estate, its "lifeblood." Oct. 9, 2018 Hr'g Tr. at 58:9–10 [Docket No. 134]. Indeed, the WLB Debtors have represented that during the fiscal year of 2017, approximately 36% of their coal sales from U.S. mines were attributable to the proceeds from sales to the Colstrip Plant. *See* Westmoreland Coal Company, Annual Report (Form 10-K) (Apr. 2, 2018) at 12. The WLB Debtors have further represented that the lack of a contract for the sale of coal ***would*** have adverse financial consequences on them; specifically:

> Should [the WLB Debtors] be unable to successfully renew any of [their] expiring contracts [including the Colstrip Coal Supply Agreements], the reduction in the sale of [the WLB Debtors'] coal would adversely affect [their] operating results and liquidity and could result in significant impairments to the affected mine should the mine be unable to execute a new long-term coal supply agreement.

Id. at 32. This makes sense and it demonstrates the WLB Debtors' view that in lieu of a profitable, guaranteed source of revenue, rejection would leave the Rosebud Mine with no certainty as to ongoing revenues to pay its workers or satisfy its other obligations.

51. Further, to the extent that WECO argues that its Rosebud Mine operations have become more costly over time, these costs are passed through to the Buyers. (*See* U34 Coal Supply Agreement, § 12.) [redacted] As such, there is no basis to argue that commercial realities have rendered the contract burdensome to the estate. WECO will continue to profit under the Colstrip Coal Supply Agreements while in effect.

52. Nor have the WLB Debtors demonstrated potential economic gain from rejecting the Colstrip Coal Supply Agreements, as there is likely no such gain to be had. As

explained above, the Rosebud Mine and the Colstrip Plant were each designed in a manner that effectively precludes both WECO and the Buyers from operating without one another. Further, upon information and belief, WECO lacks the necessary shipping infrastructure to sell to third parties on the open market, at least at the current cost and volume WECO currently sells to the Talen and the Co-Owners. It would take a significant amount of time and money for WECO to build the infrastructure needed to ship coal to purchasers other than the Buyers. Similarly, Talen and the Co-Owners currently have no other practical source of supply for the Colstrip Plant. Even if another source of coal were available, the various environmental permits currently in effect prohibit the Colstrip Plant from burning any coal other than coal from the Rosebud Mine.

53. Even if WECO (or the Ad Hoc Group, as the successful bidder for WECO's assets) were to spend the time and capital investment to develop the necessary infrastructure to deliver to third parties, WECO would incur greater shipping costs by virtue of having to ship to distant plants by train. In addition, WECO's costs to mine coal are above market even before considering shipping costs to reach third parties. Under these circumstances, it is unlikely that another party would be willing pay WECO's costs, as the Buyers currently do, or otherwise guarantee the same profit margin that WECO is guaranteed under the Colstrip Coal Supply Agreements.

54. In light of these capital expenditures, as well as increased costs of shipping for delivery beyond the Colstrip Plant, it is commercially infeasible for WECO to enter into a profitable coal supply agreement with another purchaser. [redacted]

[redacted]

55. In any event, the WLB Debtors have not put forth any evidence that rejection of these contracts would provide a benefit to WECO's estate. Their statements have suggested just the opposite – that the Colstrip Coal Supply Agreements are necessary and valuable to their business.

56. In contrast to the lack of economic benefit to the estate, rejection would lead to many millions of dollars of rejection damages claims, further diluting the recently settled recovery to general unsecured creditors. As noted above, large potential rejection damage claims are an important consideration for a court in making the decision to approve a rejection. Moreover, until just now, the Creditors' Committee, representing the interests of unsecured creditors, may not have had prior notice of the fact that the Colstrip Coal Supply Agreements might be rejected, which would result in the substantial dilution to their recoveries—a particularly concerning issue given its recent GUC Settlement with the WLB Debtors. Instead, the Creditors' Committee may have relied on the clear language in the Plan—that those agreements would be assumed by the purchaser of the Rosebud Mine, resulting in zero dollars of dilutive rejection damage claims.

2. Rejection of Colstrip Coal Supply Agreement Fails "Balance of Equities" Test

57. Additionally, where rejection of an executory contract would adversely affect public interests, courts require the debtor to make a higher showing that the contract burdens the estate and the balance of equities favors rejection. For instance, in *Bildisco*, the U.S. Supreme Court held that rejection of an executory collective bargaining agreement should be permitted only if the debtor could show that the collective bargaining agreement to be rejected

burdened the estate, and that the equities balanced in favor of rejecting the contract. *Bildisco*, 465 U.S. at 526. There, the Court reasoned that a higher standard for rejection of a collective bargaining agreement was warranted given the "special nature" of such a contract, while also acknowledging the federal regulatory regime governing such contracts. *Id.* at 524.

58. Similarly, in *Mirant Corp.*, the Court of Appeals for the Fifth Circuit addressed the standard by which a court should analyze the rejection of an executory contract for the purchase of electricity. There, the debtor was a regulated public utility whose electricity contracts were subject to the jurisdiction of the Federal Energy Regulatory Commission ("**FERC**") under the Federal Power Act. Noting that the regulatory framework governing these contracts indicated a public interest in them, the Court determined that it would be inappropriate to use the business judgment standard to analyze their rejection because doing so would not "account for the public interest inherent in the transmission and sale of electricity." *Mirant*, 378 F.3d at 525.

59. Here, the WLB Debtors are not regulated public utilities as in *Mirant*, but the Co-Owners are. Talen, while not a regulated public utility, is authorized by FERC to engage in wholesale power transactions at market-based rates. The Co-Owners' regulation by various state public utility commissions raises similar concerns.

60. This overlay of federal statutes and regulatory authority, particularly with respect to interstate sale of electricity, requires that WECO meet a higher standard for rejection than the usual business judgment test.

61. Even beyond the overlay of federal law and regulation, at least one court has explained that "it would [not] make sense to limit application of a higher standard for rejection to just those cases where unfettered rejection is inconsistent with a federal statute or

would encroach on the turf of a federal regulator. The court can easily conceive of a case where rejection of a contract could have a significant impact upon, say, public health, such that its rejection should be allowed only after a more critical review by the court than is contemplated under the ordinary business judgment rule." *Pilgrim's Pride Corp.*, 403 B.R. at 424.

62. Here, the rejection of the Colstrip Coal Supply Agreements would have far-reaching and potentially significant consequences. For context, the Colstrip Plant's approximately 2,100 megawatts are sufficient to power approximately 1.6 million homes across Montana, Washington, Oregon, Idaho, Wyoming, and Utah. The Colstrip Plant would likely cease operations on a temporary basis soon after rejection, and could ultimately lead to a substantial reduction in its operations or accelerate a permanent shutdown. Given the size of the Colstrip Plant relative to the total available generation in the Northwest, power prices would likely increase in the region if the Colstrip Plant is not operating for an extended period of time, as has occurred during past plant outages in periods of significant demand for electricity. Depending on total electricity demand and available generation, an extended outage of the Colstrip Plant could significantly impact wholesale and retail customers in Montana, where generation is at times limited. In addition to providing electricity, the Colstrip Plant also provides critical ancillary services to maintain stability of the electrical grid in Montana and the Northwest. Its inability to operate increases the likelihood of grid instability, which could contribute to blackouts or other reliability problems.

63. The financial impact on the State of Montana, the town of Colstrip, and the employees and contractors at the Rosebud Mine and Colstrip Plant would be no less severe. A temporary or permanent shutdown of the plant could result in employees of the Rosebud Mine and Colstrip Plant being furloughed and/or terminated. In a town of less than 2,500 people, the

Colstrip Plant and Rosebud Mine combined employ over 700 people who live either in Colstrip or the surrounding area. The State of Montana could be deprived of significant tax revenues, including the coal severance tax that WECO pays on every ton of coal sold to the Buyers. The millions of dollars that WECO paid in coal severance taxes in 2017 would vanish if the mine ceased operation. A study conducted in June 2018 by the University of Montana's Bureau of Business and Economic Research attempted to quantify the financial impact a premature shutdown of Units 3 & 4 would have within Montana. The study concluded, among other things, that a premature shutdown (defined in the study to mean a shutdown in 2028) would be expected to result in (i) almost 3,300 fewer jobs compared to a shutdown in 2043; (ii) a loss of income received by Montana households varying between $250 and $350 million per year (or $5.2 billion over the period); (iii) a decline in annual gross sales by businesses and other organizations of between $700 and $800 million; (iv) a decline in population growing to more than 7,000 people by 2043; and (v) a loss of more than $1.2 billion dollars in Montana tax and nontax revenues that would not be collected between 2028 and 2043. Rejection of the Colstrip Coal Supply Agreements would produce a result that is inconsistent with the public interest, particularly during the winter months and other periods of peak electricity demand.

C. To Extent Plan Contemplates Rejection, Plan Fails Feasibility Confirmation Requirement

64. Section 1129(a)(11) of the Bankruptcy Code sets forth a "feasibility requirement," such that a debtor must demonstrate that the confirmation of a plan "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor ***or any successor*** to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11) (emphasis added). In the context of a chapter 11 plan premised on the sale of substantially all of the debtor's assets, section 1129(a)(11) applies

equally to the purchaser of such assets. *See, e.g.*, *In re Temple Zion*, 125 B.R. 910, 915–17 (Bankr. E.D. Pa. 1991) (finding debtor's chapter 11 plan was feasible pursuant to section 1129(a)(11) where proposed purchaser of debtor's assets had established likely ability to timely acquire necessary variances needed to develop debtor's realty following sale); *In re Elm Creek Joint Venture*, 93 B.R. 105, 110 (Bankr. W.D. Tex. 1988) (finding that debtor's chapter 11 plan was feasible where there was a reasonable expectation that debtor's assets would be sold pursuant to plan and debtor's claims would be paid through the proceeds from the sale, and that "[t]here is no requirement that such payments will be guaranteed."); *In re Mount Vernon Plaza Cmty. Urban Redevelopment Corp. I*, 79 B.R. 306, 309 (Bankr. S.D. Ohio 1987) (finding debtor's chapter 11 plan was feasible where court held that proposed purchaser of debtor's assets was an "institution . . . of good reputation, other viable parties exist, and the time within which the transactions are likely to occur is relatively short.").

65. We anticipate that the WLB Debtors may argue that there is no feasibility issue here because Talen and other counterparties to the Colstrip Coal Supply Agreements all need coal and will have to buy it from the Rosebud Mine regardless of whether there is an agreement. But this is speculation at best and in direct contravention to public statements the WLB Debtors have made. It is simply a reality that parties are frequently unable to come to agreement even when it would be in their separate interests to do so. A stand-off may be as likely as a deal. Given such a risk, aside from potential harm to the parties, rejecting the Colstrip Coal Supply Agreements has the potential to cause damage to the public, including the hundreds of Montana-based employees of the Rosebud Mine, and potentially also the hundreds of employees of the Colstrip Plant if it results in a prolonged impasse and a curtailment of operations or potential accelerated shutdown of the Colstrip Plant.

66. The WLB Debtors have perfectly profitable contracts for the sale of coal that they could assume and ensure feasibility; instead, they are threatening to reject these contracts with the apparent hope that they will be able to sell coal at prices above those that are merely profitable and that their hostage Buyers will pay the ransom prices demanded. But hope and speculation are insufficient to ensure WECO's successor will have buyers for coal and receive revenue without assuming the Colstrip Coal Supply Agreements. The WLB Debtors are therefore unable to meet their burden to satisfy the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

D. If Court Authorizes Rejection of Colstrip Coal Supply Agreements, Court Should Condition such Rejection upon an Adequate Transition Period for Wind-down of Colstrip Coal Supply Agreements

67. If the Court grants the WLB Debtors' rejection of the Colstrip Coal Supply Agreements, it can and should do so only subject to clearly defined terms and conditions that will minimize harm to Talen, the Co-Owners, and their stakeholders. In particular, the Court should permit rejection only once Talen and the Co-Owners have entered into a coal supply agreement with a third party, has acquired the permitting necessary to burn non-WECO coal at the Colstrip Plant, and has completed construction of the infrastructure needed to receive coal under a new agreement. Before those conditions are satisfied, WECO should be obligated to continue performing under the Colstrip Coal Supply Agreements. Alternatively, the Court could set a future deadline at which point rejection would become effective, giving Talen and the Co-Owners a reasonable time to begin operations under a third-party supply contract.

68. Without these conditions, Talen and the Co-Owners would suffer irreparable harm from rejection, as they would be incapable of providing electricity to their customers and would not have an opportunity to prepare operations for a third-party supplier. Moreover, because WECO would continue to pass its costs through to Talen and the Co-Owners

and would continue to receive per-ton profits under the Colstrip Coal Supply Agreements during this transition period, such a condition would not burden the estate or the purchasers of WECO's assets.

[*Remainder of page intentionally left blank*]

Conclusion

For the foregoing reasons, the Court should condition confirmation of the Plan upon assumption of the Colstrip Coal Supply Agreements or, in the alternative, grant relief to the parties in the manner described above to prevent the WLB Debtors from abusing the chapter 11 process for opportunistic gain and to minimize harm to Talen and other stakeholders.

Dated: January 25, 2019
Houston, Texas

/s/ Christopher M. Lopez

WEIL, GOTSHAL & MANGES LLP
Christopher M. Lopez (24041356)
Matthew S. Barr (*pro hac vice* pending)
Peter D. Isakoff (*pro hac vice* pending)
Ronit J. Berkovich (*pro hac vice* pending)

700 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: Chris.Lopez@weil.com
Matt.Barr@weil.com
Peter.Isakoff@weil.com
Ronit.Berkovich@weil.com

Attorneys for Talen Montana, LLC

Certificate of Service

I hereby certify that on January 25, 2019, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtor's proposed claims, noticing, and solicitation agent.

/s/ Christopher M. Lopez
Christopher M. Lopez

Exhibit A

U34 Coal Supply Agreement

FILED UNDER SEAL

Exhibit B

January 22, 2019 Email Correspondence

From: Koenig, Chris
To: Berkovich, Ronit; gregory.pesce@kirkland.com; Bow, Timothy Robert
Cc: Barr, Matt; Welch, Alexander; Li, David
Subject: RE: WECO/Talen
Date: Tuesday, January 22, 2019 10:49:52 AM

SUBJECT TO FRE 408

The below-referenced coal supply agreements were intentionally left off the assumed list, as the Debtors currently intend to reject those agreements as of the Plan Effective Date, subject to the ongoing business discussions about those agreements. We will adjust that plan provision accordingly to be more clear.

Christopher S. Koenig

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 2372 **M** +1 440 487 2207
F +1 312 862 2200

chris.koenig@kirkland.com

From: Berkovich, Ronit <Ronit.Berkovich@weil.com>
Sent: Tuesday, January 22, 2019 9:43 AM
To: Pesce, Gregory F. <gregory.pesce@kirkland.com>; Koenig, Chris <chris.koenig@kirkland.com>; Bow, Timothy Robert <timothy.bow@kirkland.com>
Cc: Barr, Matt <Matt.Barr@weil.com>; Welch, Alexander <Alexander.Welch@weil.com>; Li, David <David.Li@weil.com>
Subject: [EXT] WECO/Talen

K&E Team,

As you recall, we represent Talen Montana in the Westmoreland proceedings. We saw that the Debtors filed the auction cancellation notice on the docket yesterday, which means that the stalking horse bidders will be taking the assets. We reviewed the WLB Debtors' Plan Supplement filed on Friday and noticed that the assumed contracts schedule doesn't list the coal supply agreements between WECO and Talen (and other Colstrip owners). The Plan (Art. V Sec. A) that was negotiated with the stalking horse bidders and filed on the docket seems to pretty clearly state that coal purchase/sale contracts relating to Core Assets (which includes the Rosebud mine) will be deemed assumed and assigned pursuant to the Plan, so perhaps the thought was that you didn't also need to include those on the assumption schedule.

In light of the imminent objection deadline, could you please confirm that the Debtors are assuming and assigning those agreements pursuant to the Plan?

Thanks,
Ronit

Ronit J. Berkovich

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
ronit.berkovich@weil.com
+1 212 310 8534 Direct
+1 646 942 6272 Mobile

July 17, 2018

James M. Parker
Talen Montana, LLC
Colstrip Steam Electric Station
580 Willow Avenue
P.O Box 38
Colstrip, MT 59323

RE: Final Title V Operating Permit #OP0513-14

Dear Mr. Parker:

The Department of Environmental Quality has prepared the enclosed Final Operating Permit #0513-14, for Talen Montana, LLC – Colstrip Steam Electric Station, located in Section 34, Township 2 North, Range 41 East, in Rosebud County, Montana. Please review the cover page of the attached permit for information pertaining to the action taking place on Permit #OP0513-14.

If you have any questions, please contact Ed Warner, the permit writer, at (406) 444-2467 or by email at ewarner@mt.gov.

Sincerely,

Julie A. Merkel
Permitting Services Section Supervisor
Air Quality Bureau
(406) 444-3626

Ed Warner
Lead Engineer – Permitting Services Section
Air Quality Bureau
(406) 444-2467

JM: EW
Enclosure
cc: Robert Duraski, US EPA Region VIII 8P-AR
Robert Gallagher, USA EPA Region 8 – Montana Operations

STATE OF MONTANA
Department of Environmental Quality
Helena, Montana 59620

AIR QUALITY OPERATING PERMIT OP0513-14

Issued to: Talen Montana, LLC
Colstrip Steam Electric Station
580 Willow Avenue
P.O. Box 38
Colstrip, MT 59323

Final Date:	**July 17, 2018**
Expiration Date:	**July 17, 2023**
Renewal Application Due:	**July 17, 2022**

Effective Date:	**July 17, 2018**
Date of Decision:	**June 15, 2018**
End of EPA 45-day Review:	**June 14, 2018**
Proposed Issue Date:	**April 30, 2018**
Draft Issue Date:	**March 15, 2018**

Application Deemed Technically Complete:	**January 4, 2017**
Application Deemed Administratively Complete:	**January 4, 2017**
Renewal Application Received:	**January 4, 2017**

AFS Number: 030-087-0008A

Permit Issuance and Appeal Processes: In accordance with Montana Code Annotated (MCA) Sections 75-2-217 and 218 and the Administrative Rules of Montana (ARM), ARM Title 17, Chapter 8, Subchapter 12, Operating Permit Program, this operating permit is hereby issued by the Department of Environmental Quality (Department) as effective and final on July 17, 2018. This permit must be kept on-site at the above-named facility.

Terms not otherwise defined in this permit or in the Definitions and Abbreviations Appendix B of this permit have the meaning assigned to them in the referenced rules or regulations.

SECTION I. GENERAL INFORMATION

The following general information is provided pursuant to ARM 17.8.1210(1).

Company Name: Talen Montana, LLC

Mailing Address: P.O. Box 38

City: Colstrip **State**: MT **Zip**: 59323

Plant Name: Colstrip Steam Electric Station

Plant Location: Section 2, Township 2 North, Range 41 East, Rosebud County, Montana
Willow Avenue and Warehouse Road, Colstrip, Montana

Responsible Official: James M. Parker – Manager, ECS
Alternative Responsible Official: Stephen J. Christian – Manager, Environmental Compliance

Facility Contact Person: Neil Dennehy – Plant Manager
Alternative Contact Person: Gordon D. Criswell – Director, Environmental & Engineering Compliance

Primary SIC Code: 4911, Electric Services (NAICS Code: 221112)

Nature of Business: Coal-fired thermal power generation

Description of Process: Four tangential coal-fired boilers and associated equipment for generation of electricity.

SECTION II. SUMMARY OF EMISSION UNITS

The emission units regulated by this permit are the following (ARM 17.8.1211):

Emission Units ID	Description	Pollution Control Device/Practice
EU001	Unit #1 – Tangential Coal Fired Boiler	Wet Venturi Scrubber, Low NOx burner firing system and digital controls (Alstom LNCFS II ® System)
EU002	Unit #2 – Tangential Coal Fired Boiler	Wet Venturi Scrubber, Low NOx burner firing system and digital controls (Alstom LNCFS II ® System) modified with a Smartburn ® Low NOx combustion system
EU003	Unit #3 – Tangential Coal Fired Boiler	Wet Venturi Scrubber, advanced low NOx firing and digital controls for NOx control (Alstom LNCFS III® System) modified with a Smartburn ® Low NOx combustion system
EU004	Unit #4 – Tangential Coal Fired Boiler	Wet Venturi Scrubber, advanced low NOx firing and digital controls for NOx control (Alstom LNCFS III® System) modified with a Smartburn ® Low NOx combustion system
EU007	Coal Handling System (1 & 2)	Enclosed conveyors Dust suppressant Enclosed downspout with elevation doors Dustless transfer chutes (certain locations)
EU008	Coal Handling System – (silos, distribution bin, surge pile tunnel, crushing and sampling house, and vacuum cleaning system) (3 & 4)	Enclosed conveyors Dust suppressant Enclosed drop chute with elevation doors Dustless transfer chutes (certain locations)
EU009	Coal Piles (Wind Erosion)	Sealant on some storage piles, Dust suppression system, Enclosures, Wind fences on three coal piles, Water/chemical dust suppressant application through sprays or water trucks
EU010	Emergency Engines	Operation per NSPS and NESHAP
EU012	Lime Handling System	Pneumatic Unloading
EU013	Plant Roads	Dust suppressant is applied annually and water is applied as needed
EU014	Process Ponds	Material is wet
EU015	Underground Gasoline Tank	Permanent submerged fill pipe
EU017	Tangential Coal Fired Units 1-4 Mercury Emissions	Mercury oxidizer/sorbent
EU018	Mercury Oxidizer/Sorbent Handling Systems (Units 1-4)	Bin Vent Filter

SECTION III. PERMIT CONDITIONS

The following requirements and conditions are applicable to the facility or to specific emission units located at the facility (ARM 17.8.1211, 1212, and 1213).

A. Facility-Wide

Conditions	Rule Citation	Rule Description	Pollutant/Parameter	Limit
A.1	ARM 17.8.105	Testing Requirements	Testing Requirements	-------
A.2	ARM 17.8.304(1)	Visible Air Contaminants	Opacity	40%
A.3	ARM 17.8.304(2)	Visible Air Contaminants	Opacity	20%
A.4	ARM 17.8.308(1)	Particulate Matter, Airborne	Fugitive Opacity	20%
A.5	ARM 17.8.308(2)	Particulate Matter, Airborne	Reasonable Precautions	-------
A.6	ARM 17.8.308	Particulate Matter, Airborne	Reasonable Precaution, Construction	20%
A.7	ARM 17.8.309	Particulate Matter, Fuel Burning Equipment	Particulate Matter	$E= 0.882 * H^{-0.1664}$ Or $E= 1.026 * H^{-0.233}$
A.8	ARM 17.8.310	Particulate Matter, Industrial Processes	Particulate Matter	$E= 4.10 * P^{0.67}$ or $E= 55 * P^{0.11}- 40$
A.9	ARM 17.8.322(4)	Sulfur Oxide Emissions, Sulfur in Fuel	Sulfur in Fuel (liquid or solid fuels)	1 lb/MMBtu fired
A.10	ARM 17.8.322(5)	Sulfur Oxide Emissions, Sulfur in Fuel	Sulfur in Fuel (gaseous)	50 gr/100 CF
A.11	ARM 17.8.324(3)	Hydrocarbon Emissions, Petroleum Products	Gasoline Storage Tanks	-------
A.12	ARM 17.8.324	Hydrocarbon Emissions, Petroleum Products	65,000 Gallon Capacity	-------
A.13	ARM 17.8.324	Hydrocarbon Emissions, Petroleum Products	Oil-effluent Water Separator	-------
A.14	ARM 17.8.342	NESHAPs General Provisions	SSM Plans	Submittal

Conditions	Rule Citation	Rule Description	Pollutant/Parameter	Limit
A.15	Board of Health and Environmental Sciences (BHES) Findings of Fact and Conclusions of Law signed on November 21, 1975; this requirement is "State Only"	Major Facility Siting Act (MFSA) Requirements	Coal Utilized within Units #3 and #4	As specified
A.16	CV-07-40-BLG-RFC-CSO	Consent Decree	Various	As specified
A.17	Case 1:13-cv-00032-DLC-JCL	Consent Decree	Various	As specified
A.18	ARM 17.8.1211(1)(c) and 40 CFR Part 98	Greenhouse Gas Reporting	Reporting	-------
A.19	ARM 17.8.1212	Reporting Requirements	Prompt Deviation Reporting	-------
A.20	ARM 17.8.1212	Reporting Requirements	Compliance Monitoring	-------
A.21	ARM 17.8.1207	Reporting Requirements	Annual Certification	-------

Conditions

A.1. Pursuant to ARM 17.8.105, any person or persons responsible for the emissions of any air contaminant into the outdoor atmosphere shall, upon written request of the Department, provide the facilities and necessary equipment (including instruments and sensing devices) and shall conduct test, emission or ambient, for such periods of time as may be necessary using methods approved by the Department.

Compliance demonstration frequencies that list "as required by the Department" refer to ARM 17.8.105. In addition, for such sources, compliance with limits and conditions listing "as required by the Department" as the frequency, is verified annually using emission factors and engineering calculations by the Department's compliance inspectors during the annual emission inventory review; in the case of Method 9 tests, compliance is monitored during the regular inspection by the compliance inspector.

A.2. Pursuant to ARM 17.8.304(1), Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, that exhibit an opacity of 40% or greater averaged over 6 consecutive minutes, unless otherwise specified by rule or in this permit.

A.3. Pursuant to ARM 17.8.304(2), Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that

exhibit an opacity of 20% or greater averaged over 6 consecutive minutes, unless otherwise specified by rule or in this permit.

A.4. Pursuant to ARM 17.8.308(1), Talen shall not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of particulate matter (PM) are taken. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20% or greater averaged over 6 consecutive minutes, unless otherwise specified by rule or in this permit.

A.5. Pursuant to ARM 17.8.308(2), Talen shall not cause or authorize the use of any street, road or parking lot without taking reasonable precautions to control emissions of airborne particulate matter, unless otherwise specified by rule or in this permit.

A.6. Pursuant to ARM 17.8.308, Talen shall not operate a construction site or demolition project unless reasonable precautions are taken to control emissions of airborne PM. Such emissions of airborne PM from any stationary source shall not exhibit an opacity of 20% or greater averaged over 6 consecutive minutes, unless otherwise specified by rule or in this permit.

A.7. Pursuant to ARM 17.8.309, unless otherwise specified by rule or in this permit, Talen shall not cause or authorize PM caused by the combustion of fuel to be discharged from any stack or chimney into the outdoor atmosphere in excess of the maximum allowable emissions of PM for existing fuel burning equipment and new fuel burning equipment calculated using the following equations:

For existing fuel burning equipment (installed before November 23, 1968):
$E = 0.882 * H^{-0.1664}$

For new fuel burning equipment (installed on or after November 23, 1968):
$E = 1.026 * H^{-0.233}$

Where H is the heat input capacity in million British thermal units (MMBtu) per hour and E is the maximum allowable particulate emissions rate in pounds per MMBtu.

A.8. Pursuant to ARM 17.8.310, unless otherwise specified by rule or in this permit, Talen shall not cause or authorize PM to be discharged from any operation, process, or activity into the outdoor atmosphere in excess of the maximum hourly allowable emissions of PM calculated using the following equations:

For process weight rates up to 30 tons per hour: $E = 4.10 * P^{0.67}$
For process weight rates in excess of 30 tons per hour: $E = 55.0 * P^{0.11} - 40$

Where E = rate of emissions in pounds per hour and p = process weight rate in tons per hour.

A.9. Pursuant to ARM 17.8.322(4), Talen shall not burn liquid or solid fuels containing sulfur in excess of 1 pound per MMBtu fired, unless otherwise specified by rule or in this permit.

A.10. Pursuant to ARM 17.8.322(5), Talen shall not burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions, unless otherwise specified by rule or in this permit.

A.11. Pursuant to ARM 17.8.324(3), Talen shall not load or permit the loading of gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device or is a pressure tank as described in ARM 17.8.324(1), unless otherwise specified by rule or in this permit.

A.12. Pursuant to ARM 17.8.324, unless otherwise specified by rule or in this permit, Talen shall not place, store or hold in any stationary tank, reservoir or other container of more than 65,000 gallon capacity any crude oil, gasoline or petroleum distillate having a vapor pressure of 2.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with a vapor loss control device, properly installed, in good working order and in operation.

A.13. Pursuant to ARM 17.8.324, unless otherwise specified by rule or in this permit, Talen shall not use any compartment of any single or multiple-compartment oil-effluent water separator, which compartment receives effluent water containing 200 gallons a day or more of any petroleum product from any equipment processing, refining, treating, storing or handling kerosene or other petroleum product of equal or greater volatility than kerosene, unless such compartment is equipped with a vapor loss control device, constructed so as to prevent emission of hydrocarbon vapors to the atmosphere, properly installed, in good working order and in operation.

A.14. Pursuant to ARM 17.8.342 and 40 CFR 63.6, Talen shall submit to the Department a copy of any startup, shutdown, and malfunction (SSM) plan required under 40 CFR 63.6(e)(3) within 30 days of the effective date of this operating permit (if not previously submitted), within 30 days of the compliance date of any new National Emission Standard for Hazardous Air Pollutants (NESHAPs) or Maximum Achievable Control Technology (MACT) standard, and within 30 days of the revision of any such SSM plan, when applicable. The Department requests submittal of such plans in electronic form, when possible.

A.15. In accordance with the conditional certification of Colstrip Units #3 and #4 made pursuant to Section 70-810 (L), Revised Code of Montana (R.C.M) 1947 of the Major Facility Siting Act (MFSA), Talen shall utilize only coal from the Rosebud seam within Units #3 and #4 (Board of Health and Environmental Sciences (BHES) Findings of Fact and Conclusions of Law signed on November 21, 1975; this requirement is "State-Only").

A.16. Talen shall comply with the following applicable terms of US EPA Consent Decree CV-07-40-BLG-RFC-CSO (entered 5/14/07), and its Amendments, for the life of the Consent Decree (ARM 17.8.1211):

a. Section IV: Oxides of Nitrogen (NO_x) Emission Reductions and Controls;

b. Section V: Prohibition on Netting Credits or Offsets from Required Controls;

c. Section VI: Relationship to PSD Permit;

d. Section X: Periodic Reporting;

e. Section XII: Force Majeure (excluding the stipulated penalty components);

f. Section XIV: Permits; and

g. Section XV: Information Collection and Retention.

A.17. Talen shall comply with the applicable terms of Consent Decree in Case 1:13-cv-00032-DLC-JCL filed 09/06/16 (ARM 17.8.1211)

A.18. Pursuant to ARM 17.8.1211(1)(c) and 40 CFR Part 98, Talen shall comply with requirements of 40 CFR Part 98 – Mandatory Greenhouse Gas Reporting, as applicable (ARM 17.8.1211(1)(c), NOT an applicable requirement under Title V).

A.19. Talen shall promptly report deviations from permit requirements including those attributable to upset conditions, as upset is defined in the permit. To be considered prompt, deviations shall be reported to the Department using the schedule and content as described in Section V.E (unless otherwise specified in an applicable requirement) (ARM 17.8.1212).

A.20. On or before February 15 and August 15 of each year, Talen shall submit to the Department the compliance monitoring reports required by Section V.D. These reports must contain all information required by Section V.D, as well as the information required by each individual emissions unit. For the reports due by February 15 of each year, Talen may submit a single report, provided that it contains all the information required by Section V.B & V.D. Per ARM 17.8.1207,

> *any application form, report, or compliance certification submitted pursuant to ARM Title 17, Chapter 8, Subchapter 12 (including semiannual monitoring reports), shall contain certification by a responsible official of truth, accuracy and completeness. This certification and any other certification required under ARM Title 17, Chapter 8, Subchapter 12, shall state that,* ***"based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete."***

A.21. By February 15 of each year, Talen shall submit to the Department the compliance certification report required by Section V.B. The annual certification report required by Section V.B must include a statement of compliance based on the information available that identifies any observed, documented or otherwise known instance of noncompliance for each applicable requirement. Per ARM 17.8.1207,

> *any application form, report, or compliance certification submitted pursuant to ARM Title 17, Chapter 8, Subchapter 12 (including annual certifications), shall contain certification by a responsible official of truth, accuracy and completeness. This certification and any other certification required under ARM Title 17, Chapter 8, Subchapter 12, shall state that,* ***"based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete."***

B. EU001 and EU002 – Tangential Coal Fired Units 1 & 2

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
B.1, B.8, B.14, B.15, B.25, B.26, B.31, B.32, B.33, B.35, B.37	Opacity	20%/27%	COMS	Ongoing	Quarterly
			Method 9	As required by the Department and Section III.A.1	Semiannually
B.2, B.16, B.25, B.31, B.32, B.35 B.37	Filterable PM	0.1 lb/MMBtu	Method 5 or 5B	Annual	
B.3, B.8, B.9, B.17, B.18, B.22, B.25, B.27, B.31, B.32, B.35, B.37	SO_2	1.2 lb/MMBtu	Method 6 or 6C	Annual	Semiannually
			CEMS	Ongoing	Quarterly
B.3, B.8, B.9, B.11, B.17, B.20, B.22, B.25, B.27, B.31, B.32, B.35, B.37	NO_x	0.7 lb/MMBtu	Method 7 or 7E	Annual	Semiannually
			CEMS	Ongoing	Quarterly
		0.40 lb/MMBtu (annual average)	40 CFR Parts 72-78 and Appendix H	As required by Appendix H	
B.4, B.19, B.27, B.29, B.32, B.35	SO_2 (Consent Decree 1:13-cv-00032-DLC-JCL)	0.40 lb/MMBtu (30-day rolling average)	CEMS	Ongoing	Quarterly
B.4, B.19, B.27, B.29, B.32, B.35	NO_x (Consent Decree 1:13-cv-00032-DLC-JCL)	0.45 lb/MMBtu (30-day rolling average) for Unit 1	CEMS	Ongoing	Quarterly
		0.20 lb/MMBtu (30-day rolling average) for Unit 2			
B.4, B.19, B.27, B.29, B.35	Units 1 & 2 (Consent Decree 1:13-cv-00032-DLC-JCL)	Cease operation by July 1, 2022	Notification	Recordkeeping	Initial
B.5, B.21, B.30, B.35, B.36, B.37	Emission Limitations-40 CFR Part 63, Subpart UUUUU (Table 2)	Table 2 - 40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	Semiannually
B.6, B.21, B.30, B.35, B.36, B.37	Work Practice Standards - 40 CFR Part 63, Subpart UUUUU (Table 3)	Table 3 - 40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	
B.7, B.21, B.30, B.35, B.36, B.37	Operating Limits - 40 CFR Part 63, Subpart UUUUU (Table 4)	Table 4 - 40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
B.9, B.10, B.11, B.17, B.22, B.27, B.29, B.31, B.34, B.35, B.37	Acid Rain Provisions	40 CFR Parts 72-78 and Appendix H	40 CFR Parts 72-78 and Appendix H	As required by Appendix H	Quarterly
B.12, B.23, B.28, B.31, B.35, B.37	PM CAM Plan	ARM 17.8.1506	Provisions from CAM Plan, Appendix I	Ongoing	
B.13, B.24, B.31, B.35, B.37	Scrubbers	Maintain & Operate	Log	Daily	

Conditions

B.1. Talen shall not cause or authorize to be discharged into the atmosphere from Units 1 & 2 any visible emissions that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes except for one 6-minute period per hour of not greater than 27% opacity (ARM 17.8.340 and 40 CFR Part 60, Subpart D).

B.2. Talen shall not cause to be discharged into the atmosphere filterable PM in excess of 0.10 lb/MMBtu, as averaged over 3 hours (minimum) of reference method testing (ARM 17.8.340, and 40 CFR Part 60, Subpart D).

B.3. Any gaseous emissions discharged into the atmosphere shall not exceed 1.2 lb/MMBtu Sulfur Dioxide (SO_2) and 0.7 lb/MMBtu NO_x (ARM 17.8.340 and 40 CFR Part 60, Subpart D).

B.4. The following conditions apply to Units 1 & 2 as required by Consent Decree Case 1:13-cv-00032-DLC-JCL entered 9/06/16 (Consent Decree Case 1:13-cv-00032-DLC-JCL):

a. Units 1 & 2 shall each achieve and maintain a 30-day rolling average emission rate for SO_2 of no greater than 0.40 lb/MMBtu.

b. Unit 1 shall achieve and maintain a 30-day rolling average emission rate for NO_x of no greater than 0.45 lb/MMBtu.

c. Unit 2 shall achieve and maintain a 30-day rolling average emission rate for NO_x of no greater than 0.20 lb/MMBtu.

d. On or before July 1, 2022, Talen and Puget Sound Energy shall cease combustion of fuel at and permanently cease operation of the boilers for Colstrip Power Plant Units 1 and 2 and shall not, thereafter, burn any fuel in or otherwise operate those boilers. This obligation applies to Talen and Puget Sound Energy (hereinafter, "Owners of Colstrip Units 1 and 2") as the current owners of Units 1 and 2. This obligation is transferable pursuant to section VI of Consent Decree in Case 1:13-cv-00032-DLC-JCL.

Note: The following definitions apply to the conditions required by Consent Decree Case 1:13-cv-00032-DLC-JCL:

- "Boiler" means such equipment used to facilitate combustion of fuel as well as the transfer of heat generated to water so as to generate steam for use in an associated steam turbine to generate electricity.

- "CEMS" or "Continuous Emission Monitoring System," means, for obligations involving the monitoring of NOx and SO2 emissions under this Consent Decree, the devices defined in 40 CFR § 72.2 and installed and maintained as required by 40 CFR Part 60 and 40 CFR Part 75.

- "Day" shall mean, unless otherwise specified, calendar day.

- "Emission Rate" for a given pollutant means the number of pounds of that pollutant emitted per million British thermal units of heat input (lb/MMBtu), measured in accordance with this Consent Decree.

- A "30-Day Rolling Average Emission Rate" for a Unit shall be determined by calculating an arithmetic average of all hourly emission rates in lb/MMBtu for the current Unit Operating Day and all hourly emission rates in lb/MMBtu for the previous 29 Unit Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average Emission Rate shall exclude all data from periods of startup and shutdown, as defined in 40 CFR § 63.10042.

- "Unit Operating Day" means any Day on which a Unit fires any fossil fuel.

B.5. Talen shall comply with the applicable emission limitations of 40 CFR Part 63, Subpart UUUUU – *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*. These emission limits apply at all times except during periods of startup and shutdown. As stated in 40 CFR § 63.9991, an existing source must comply with the applicable emission limits summarized in the table below (ARM 17.8.342 and 40 CFR Part 63, Subparts A and UUUUU):

Pollutants (a, b, and c)			Emission Limit
a.	Filterable particulate matter (PM)		0.030 lb/MMBtu or 0.30 lb/MWh
	OR Total non-Hg HAP metals		0.000050 lb/MMBtu or 0.50 lb/GWh
	OR Individual HAP metals:	Antimony (Sb)	0.80 lb/TBtu or 0.0080 lb GWh
		Arsenic (As)	1.1 lb/TBtu or 0.020 lb/GWh
		Beryllium (Be)	0.20 lb/TBtu or 0.0020 lb/GWh
		Cadmium (Cd)	0.30 lb/TBtu or 0.0030 lb/GWh
		Chromium (Cr)	2.8 lb/TBtu or 0.030 lb/GWh
		Cobalt (Co)	0.80 lb/TBtu or 0.0080 lb/GWh
		Lead (Pb)	1.2 lb/TBtu or 0.020 lb/GWh
		Manganese (Mn)	4.0 lb/TBtu or 0.050 lb/GWh
		Nickel (Ni)	3.5 lb/TBtu or 0.040 lb/GWh
		Selenium (Se)	5.0 lb/TBtu or 0.060 lb/GWh
b.	Hydrogen Chloride (HCl)		0.0020 lb/MMBtu or 0.020 lb/MWh
	OR Sulfur Dioxide (SO_2)		0.20 lb/MMBtu or 1.5 lb/MWh
c.	Mercury (Hg)		1.2 lb/TBtu or 0.013 lb/GWh

NOTE: Talen shall comply with the emission limits in the table for the pollutants in the rows labeled a., b., and c; however, the standard allows the source to elect the pollutant in rows a. and b. for which it will demonstrate compliance. For row a, Talen may elect to demonstrate compliance with either filterable PM, total non-Hg HAP metals, or each of the individually-listed HAP metal emission limits. For row b., Talen may elect to demonstrate compliance with either the HCl or the SO_2 limit. The SO_2 limit may be used only if some form of flue gas desulfurization is used and a SO_2 CEMS installed.

B.6. Talen shall comply with the applicable work practice standards of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.342 and 40 CFR Part 63, Subparts A and UUUUU).

B.7. Talen shall comply with the applicable operating limits of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.342 and 40 CFR Part 63, Subparts A and UUUUU).

B.8. Talen shall install, operate, calibrate and maintain continuous emission monitoring systems (CEMS) for the following:

a. A CEMS for the measurement of SO_2 shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

b. A CEMS for the measurement of NO_x shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

c. A CEMS for the measurement of Carbon Dioxide (CO_2) shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

d. A CEMS for the measurement of opacity shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45); and

e. Continuous monitoring for stack gas temperature, stack gas moisture (where necessary), megawatt production, and Btu per hour shall be performed on each unit (40 CFR 75.59).

B.9. Talen shall comply with all requirements in the Acid Rain Appendix H of this permit including the operation and maintenance of the SO_2 and NO_x CEMS (ARM 17.8.1210(3)).

B.10. Emissions shall not be permitted in excess of any allowances that Talen lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder (ARM 17.8.1210(3)(a)).

a. A permit revision is not required for increases in emissions authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement (ARM 17.8.1210(3)(b)).

b. Talen may not use allowances as a defense to noncompliance with any other applicable requirement (ARM 17.8.1210(3)(c)).

c. Any allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA (ARM 17.8.1210(3)(d)).

B.11. Pursuant to 40 CFR 76.7, Talen shall not discharge or allow to be discharged, emissions of NO_x to the atmosphere in excess of 0.40 lb/MMBtu on an annual average basis (40 CFR 76.7(a)).

B.12. Talen shall provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations of the Tangential Coal-Fired Boilers, Units 1 & 2 for PM (ARM 17.8.1504).

B.13. Talen shall maintain and operate the scrubbers to control emissions on Units 1 & 2 (ARM 17.8.749).

Compliance Demonstration

B.14. Talen shall perform a Method 9 test on the boilers as required by the Department and Section III.A.1 while the boilers are in operation to monitor compliance with the opacity limitation in Section III.B.1. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual or another method approved by the Department (ARM 17.8.749 and ARM 17.8.106).

B.15. Talen shall operate and maintain the continuous opacity monitor (COM) to monitor compliance with the opacity limitation in Section III.B.1. The operation and maintenance shall be performed in accordance with the Opacity CEMS Appendix E of this permit (ARM 17.8.749).

B.16. Talen shall perform a Method 5 or 5B PM test annually during periods the equipment is in operation to monitor compliance with the filterable PM limit in Section III.B.2. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.749 and ARM 17.8.106).

B.17. Talen shall monitor compliance with emission limits in Section III.B.3 pursuant to the requirements in 40 CFR Part 75, SO_2 CEMS, Appendix F, and the NO_x CEMS Appendix G of this permit (ARM 17.8.1213).

B.18. Talen shall perform a Method 6 or 6C test annually during periods of boiler operation to monitor compliance with the SO_2 limit in Section III.B.3. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.749 and ARM 17.8.106).

B.19. Talen shall comply with the conditions of Consent Decree Case 1:13-cv-00032-DLC-JCL entered 9/06/16 as described in that document, including the following (ARM 17.8.1213 and Consent Decree Case 1:13-cv-00032-DLC-JCL):

a. Compliance with the 30-day rolling average emission rate limit for SO_2 in Section III.B.4.a for Units 1 & 2 shall be determined by emission data obtained from a CEMS according to the procedures of 40 CFR Part 75, except that SO_2 emissions data need not be bias adjusted and the missing data substitution procedures of 40 CFR Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO_2) will be applied to the SO_2 emission rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 CFR Part 75, Appendix F, Section 3.3.4.1.

b. Compliance with the 30-day rolling average emission rate for NO_x in Section III.B.4.b and III.B.4.c for Units 1 & 2 shall be based on NO_x emission data obtained from a CEMS in accordance with the procedures of 40 CFR Part 75, except that NO_x emissions data need not be bias adjusted and the missing data substitution procedures of 40 CFR Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO_2) will be applied to the NO_x emission rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 CFR Part 75, Appendix F, Section 3.3.4.1.

c. Talen shall provide notification to the Department confirming the cessation of operations for Units 1 & 2. The notification shall clearly indicate the final date of operation for both Units 1 & 2.

B.20. Talen shall perform a Method 7 or 7E test annually during periods of boiler operation to monitor compliance with the NO_x limit in Section III.B.3. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.749 and ARM 17.8.106).

B.21. Talen shall monitor compliance with the applicable emission limitations in Section III.B.5, work practice standards in Section III.B.6, and the operating limits in Section III.B.7 in accordance with 40 CFR Part 63, Subpart UUUUU. Continued compliance shall be demonstrated by conducting the required performance tests and monitoring in 40 CFR Part 63, Subpart UUUUU (ARM 17.8.1213, ARM 17.8.342 and 40 CFR Part 63, Subpart UUUUU).

B.22. Talen shall monitor compliance with the Acid Rain Provisions according to 40 CFR Parts 72-78 and Appendix H of this permit, including monitoring as described in the SO_2 CEMS Appendix F and NO_x CEMS Appendix G of this permit (ARM 40 CFR Parts 72-78).

B.23. Talen shall monitor compliance by following the Compliance Assurance Monitoring (CAM) Plan (Appendix I). The CAM Plan, written by Colstrip in accordance with ARM 17.8.1504, is included in Appendix I of the permit (ARM 17.8.1213 and ARM 17.8.1503).

B.24. Talen shall maintain records of scrubber maintenance and operation to monitor compliance with Section III.B.13 (ARM 17.8.1213).

Recordkeeping

B.25. All source testing recordkeeping shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. Method 9 source test reports for opacity need not be submitted unless requested by the Department (ARM 17.8.106).

B.26. Records shall be prepared and data kept in accordance with the Opacity CEMS Appendix E of this permit (ARM 17.8.1212).

B.27. Records shall be prepared and data kept in accordance with 40 CFR Part 75 and Appendix H of this permit, the SO_2 CEMS Appendix F, and the NO_x CEMS Appendix G of this permit (ARM 17.8.1212 and 40 CFR Parts 72-78).

B.28. Records shall be prepared and data kept in accordance with 40 CFR Part 64 and the CAM Plan Appendix I of this permit (ARM 17.8.1212 and ARM 17.8.1513).

B.29. Talen shall maintain the following records (ARM 17.8.1212):

a. All SO_2 and NO_x CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

b. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

c. Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

d. Any other records required by 40 CFR Part 75.

e. All particulate matter stack test results.

B.30. Records shall be prepared and data kept in accordance with the recordkeeping requirements of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.1212 and 40 CFR Part 63, Subpart UUUUU).

B.31. Talen shall maintain as a permanent business record under its control for at least 5 years, all records required for compliance monitoring. Furthermore, the records must be available at the plant site for inspection by the Department and EPA, and must be submitted to the Department upon request (ARM 17.8.1212 and 40 CFR Part 63, Subpart UUUUU).

Reporting

B.32. The testing results shall be submitted to the Department in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106 and ARM 17.8.1212).

B.33. Reporting for the opacity CEMS shall be performed according to Appendix E of this permit (ARM 17.8.1212).

B.34. Reporting for the Acid Rain Provisions shall be performed according to 40 CFR Parts 72-78 and Appendix H of this permit (40 CFR Parts 72-78).

B.35. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

B.36. Talen shall meet the applicable reporting requirements of 40 CFR 63, Subpart UUUUU and Section III.B.5 of this Operating Permit (ARM 17.8.1212 and 40 CFR Part 63, Subparts A and UUUUU).

B.37. The semiannual monitoring report shall provide a compliance report meeting the applicable reporting requirements of 40 CFR Part 63, Subpart UUUUU and Section III.B.5 of this Operating Permit, a summary of results of any Method 9, Method 5, 5B, 5D, or 17, Method 6 or 6C, and Method 7 or 7E tests conducted during the period; the actual test reports for Method 9 need only be submitted to the Department by request, as specified by Section III.B.14 (ARM 17.8.1212).

C. EU003 and EU004 – Tangential Coal Fired Units 3 & 4

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
C.1, C.24, C.27, C.28, C.46, C.48, C.49, C.49, C.51, C.54, C.55, C.57, C.58, C.59	Opacity	20%/27%	COMS	Ongoing	Quarterly
			Method 9	As required by the Department and Section III.A.1	Semiannually
C.2, C.3, C.4, C.29, C.30, C.47, C.48, C.54, C.55, C.57	PM	0.05 lb/MMBtu	Method 5 or Method 5B	Annual	
		379 lb/hr			
		0.10 lb/MMBtu			
C.4, C.5, C.6, C.7, C.8, C.24, C.31, C.32, C.41, C.48, C.49, C.51, C.53, C.54, C.55, C.56, C.57, C.58, C.59	SO_2	1.2 lb/MMBtu	Method 6 or 6C	Annual	
		0.18 lb/MMBtu (calendar day average)	CEMS	Ongoing	Quarterly
		761 lb/hr (30 day rolling average)			
		1363 lb/hr (calendar day average)			
		4140 lb/hr (3-hr rolling average)			
C.9, C.33, C.43, C.48, C.54, C.55, C.57, C.59	% sulfur	1% sulfur content of coal	Weekly average of composite coal samples in accordance with Method 19	Ongoing	Semiannually
C.4, C.10, C.11, C.12, C.24, C.34, C.35, C.36, C.41, C.44, C.48, C.49, C.51, C.53, C.54, C.55, C.56, C.57, C.58, C.59	NO_x	0.7 lb/MMBtu	Method 7 or 7E	Annual	
			CEMS	Ongoing	Quarterly
		5301 lb/hr			
		0.40 lb/MMBtu (annual average)	40 CFR Parts 72-78 and Appendix H	As required by Appendix H	

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
		$\frac{E=0.2x+0.3y+0.7z}{x + y + z}$	Emissions limit calculations	When burning fuel other than coal	Semiannually
C.13, C.35, C.41, C.49, C.51, C.53, C.54, C.55, C.57, C.58, C.59	NO_2	0.7 lb/MMBtu (calendar day average)	CEMS	Ongoing	Quarterly
C.14, C.20, C.35, C.41, C.49, C.51, C.53, C.54, C.55, C.57, C.58, C.59	NO_x (30-day rolling average)	0.18 lb/MMBtu if unit operating > 400 MW	CEMS	Ongoing	
		0.30 lb/MMBtu if unit operating =<400 MW			
		1,363 lb/hr			
	NO_x (24-hour average)	0.25 lb/MMBtu if unit operating > 400 MW			
		0.30 lb/MMBtu if unit operating =<400 MW			
		1,893 lb/hr			
C.15, C.37, C.53, C.54, C.55, C.56, C.57, C.58	Emission Limitations- 40 CFR 63, Subpart UUUUU (Table 2)	Table 2 - 40 CFR 63, Subpart UUUUU	40 CFR 63, Subpart UUUUU	40 CFR 63, Subpart UUUUU	Semiannually
C.16, C.37, C.53, C.54, C.55, C.56, C.57	Work Practice Standards - 40 CFR 63, Subpart UUUUU (Table 3)	Table 3 - 40 CFR 63, Subpart UUUUU	40 CFR 63, Subpart UUUUU	40 CFR 63, Subpart UUUUU	
C.17, C.37, C.53, C.55, C.56, C.57, C.58	Operating Limits - 40 CFR Part 63, Subpart UUUUU (Table 4)	Table 4 - 40 CFR 63, Part Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	40 CFR Part 63, Subpart UUUUU	
C.18, C.19, C.38, C.45, C.55, C.57	NO_x Control	Operate digital controls, low-NO_x burners, overfire air	Documentation	Ongoing	Semiannually
C.21, C.38, C.45, C.55, C.57	NO_x Control	Classification, BART, visibility, and Baseline Visibility	As required by EPA	As required by EPA	As required by EPA
C.22, C.23, C.39, C.49, C.50, C.55, C.57	Acid Rain Provisions	40 CFR Parts 72-78 and Appendix H	40 CFR Parts 72-78 and Appendix H	As required by Appendix H	Quarterly

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
C.24, C.41, C.46, C.49, C.51, C.53, C.55, C.57, C.58	SO_2	CEMS	Install, Operate and Maintain	Ongoing	Quarterly
	NO_x				
	diluent				
	Opacity				
C.25, C.40, C.55, C.57	Heat Input	6.63 x 10^7 MMBtu/yr	Coal analysis and tonnage	Monthly	
			log	Monthly	
C.24, C.41, C.49, C.51, C.55, C.57	Stack Parameters	Measure stack parameters	Monitor stack gas temperature, moisture, Mwatt production and Btu/hr	Ongoing	
C.26, C.42, C.52, C.55, C.57	PM CAM Plan	ARM 17.8.1506	Provisions from CAM Plan, Appendix I	Ongoing	

Conditions

C.1. Talen shall not cause or authorize to be discharged into the atmosphere from Units 3 & 4 any visible emissions that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes except for one 6-minute period per hour of not greater than 27% opacity (ARM 17.8.340 and 40 CFR Part 60, Subpart D).

C.2. Talen shall not cause to be discharged into the atmosphere filterable PM in excess of 0.05 lb/MMBtu, as averaged over 3 hours (minimum) of reference method testing (40 CFR 52.21).

C.3. Talen shall not cause to be discharged into the atmosphere filterable PM in excess of 379 lb/hr (ARM 17.8.749).

C.4. Any gaseous emissions discharged into the atmosphere from burning coal shall not exceed 0.10 lb/MMBtu filterable PM, 1.2 lb/MMBtu SO_2 and 0.7 lb/MMBtu NO_x (ARM 17.8.340 and 40 CFR Part 60, Subpart D).

C.5. Talen shall not cause to be discharged into the atmosphere SO_2 at a rate of 0.18 lb/MMBtu heat input, averaged over any calendar day, not to be exceeded more than once during any calendar month (40 CFR 52.21).

C.6. Talen shall not cause to be discharged into the atmosphere SO_2 at a rate of 761 lb/hr, averaged over any rolling 30-day period, calculated each day at midnight, using hourly data calculated each hour on the hour (40 CFR 52.21).

C.7. Talen shall not cause to be discharged into the atmosphere SO_2 at a rate of 1363 lb/hr, averaged over any calendar day, not to be exceeded more than once during any calendar month (40 CFR 52.21).

C.8. Talen shall be limited to a maximum of 4140 lb/hr of SO_2 averaged over a 3-hr rolling period from both Units 3 & 4 stacks combined (ARM 17.8.749).

C.9. Talen shall be limited to a sulfur content in coal of 1% (ARM 17.8.749 and BHES Findings of Fact and Conclusions of Law signed on November 21, 1975; this requirement is "State Only").

Talen has developed a contingency plan for blending coal to achieve the 1.0% (sulfur as received basis) limit. Implementation of the plan will not be required unless the coal exceeds the "worst case coal" design criteria, which is a heat content of less than 8162 Btu/lb, and ash content of greater than 12.5% and a sulfur content greater than 1%, all on an as-received basis.

C.10. Pursuant to 40 CFR 76.7, Talen shall not discharge or allow discharged emissions of NO_x to the atmosphere in excess of 0.40 lb/MMBtu on an annual average basis (40 CFR 76.7(a)).

C.11. Talen shall be limited to 5301 lb/hr of NO_x from each of the tangential coal fired boilers, Units 3 & 4 (ARM 17.8.749).

C.12. Any gaseous NO_x emissions discharged into the atmosphere when burning fuel other than coal shall not exceed (ARM 17.8.749):

$$E = \frac{0.2x + 0.3y + 0.7z}{x + y + z}$$

where: E = allowable emissions in lb/MMBtu heat input
x = fraction of total heat input derived from gaseous fuels
y = fraction of total heat input derived from liquid fuels
z = fraction of total heat input derived from solid fuels.

C.13. Talen shall not cause to be discharged into the atmosphere NO_x, expressed as NO_2, at a rate exceeding 0.7 lb/MMBtu, as averaged over any calendar day (40 CFR 52.21).

C.14. Beginning January 1, 2008, for Unit 3 and January 19, 2010, for Unit 4, Talen shall not exceed any of the following NO_x emission limits from Units 3 or 4 (ARM 17.8.749, Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07 and Stipulation to Consent Decree CV-07-40-BLG-RFC-CSO entered 12/22/09):

a. 30-day rolling average emission rate of:

i. 0.18 lb/MMBtu weighted average for each hour that either unit is operating above 400 gross megawatts (MW); and

ii. 0.30 lb/MMBtu weighted average for each hour that either unit is operating at or below 400 gross MW

b. 1,363 lb/hr 30-day rolling average emission rate for each unit

c. 24-hour average emission rate (for each Operating Day) of:

i. 0.25 lb/MMBtu weighted average for each hour that either unit is operating above 400 gross MW; and

ii. 0.30 lb/MMBtu weighted average for each hour that either unit is operating at or below 400 gross MW

d. 1,893 lb/hr 24-hour average emission rate (for each Operating Day) for each unit.

For the purposes of this section, if a unit is operating above 400 MW for part of one hour and at or below 400 MW for the remainder of that hour, the applicable emissions limits shall be based on the average load for the hour. In addition, the emission rates for this condition are considered for an "Operating Day" as defined in the Consent Decree entered 5/14/07 (CV-07-40-BLG-RFC-CSO), except for the purposes of the Montana Air Quality Permits (MAQP), "Operating Day" means any calendar day (midnight to midnight) in which *any* fuel is combusted in the unit.

C.15. Talen shall comply with the applicable emission limitations of 40 CFR Part 63, Subpart UUUUU - *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*. These emission limits apply at all times except during periods of startup and shutdown. As stated in 40 CFR § 63.9991, an existing source must comply with the applicable emission limits summarized in the table below (ARM 17.8.342 and 40 CFR Part 63, Subparts A and UUUUU):

	Pollutants (a, b, and c)		Emission Limit
a.	Filterable particulate matter (PM)		0.030 lb/MMBtu or 0.30 lb/MWh
	OR Total non-Hg HAP metals		0.000050 lb/MMBtu or 0.50 lb/GWh
	OR Individual HAP metals:	Antimony (Sb)	0.80 lb/TBtu or 0.0080 lb GWh
		Arsenic (As)	1.1 lb/TBtu or 0.020 lb/GWh
		Beryllium (Be)	0.20 lb/TBtu or 0.0020 lb/GWh
		Cadmium (Cd)	0.30 lb/TBtu or 0.0030 lb/GWh
		Chromium (Cr)	2.8 lb/TBtu or 0.030 lb/GWh
		Cobalt (Co)	0.80 lb/TBtu or 0.0080 lb/GWh
		Lead (Pb)	1.2 lb/TBtu or 0.020 lb/GWh
		Manganese (Mn)	4.0 lb/TBtu or 0.050 lb/GWh
		Nickel (Ni)	3.5 lb/TBtu or 0.040 lb/GWh
		Selenium (Se)	5.0 lb/TBtu or 0.060 lb/GWh
b.	Hydrogen Chloride (HCl)		0.0020 lb/MMBtu or 0.020 lb/MWh
	OR Sulfur Dioxide (SO_2)		0.20 lb/MMBtu or 1.5 lb/MWh
c.	Mercury (Hg)		1.2 lb/TBtu or 0.013 lb/GWh

NOTE: Talen shall comply with the emission limits in the table for the pollutants in the rows labeled a., b., and c; however, the standard allows the source to elect the pollutant in rows a. and b. for which it will demonstrate compliance. For row a, Talen may elect to demonstrate compliance with either filterable PM, total non-Hg HAP metals, or each of the individually-listed HAP metal emission limits. For row b., Talen may elect to demonstrate compliance with either the HCl or the SO_2 limit. The SO_2 limit may be used only if some form of flue gas desulfurization is used and a SO_2 CEMS installed.

C.16. Talen shall comply with the applicable work practice standards of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.342 and ARM 40 CFR Part 63, Subparts A and UUUUU).

C.17. Talen shall comply with the applicable operating limits of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.342 and ARM 40 CFR Part 63, Subparts A and UUUUU).

C.18. Talen shall operate digital controls, low-NO_x burners and overfire air on Unit 3 sufficient to meet the emissions limits in Section III.C.14 (ARM 17.8.749 and Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07).

C.19. By January 1, 2009, Talen shall complete the final design and by January 19, 2010, Talen shall install and operate digital controls, low-NO_x burners and overfire air on Unit 4 sufficient to meet the Unit 4 emissions limits in Section III.C.14 (ARM 17.8.749, Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07 and Stipulation to Consent Decree CV-07-40-BLG-RFC-CSO entered 12/22/09).

C.20. The Unit 3 & 4 NO_x emission limits specified in Section III.C.14 shall apply at all times, including periods of start-up, shutdown, load fluctuation, maintenance and malfunction, regardless of cause (ARM 17.8.749 and Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07).

C.21. Should the Northern Cheyenne Reservation be redesignated to any PSD classification less stringent than Class I, the following conditions in Section III.C.21 shall be of no force and effect. However, any control designed and implemented pursuant to Section III.C.21 shall remain operable.

At such time as EPA promulgates requirements for Best Available Retrofit Technology (BART) for NO_x control under the Clean Air Act, Talen shall review Colstrip Units 3 & 4 for implementation of BART for NO_x control. Talen shall submit this analysis and recommendation for appropriate control to EPA for review and approval. This BART determination by EPA shall be subject to a formal hearing on the record after due notice to Talen and the Northern Cheyenne Tribe. The determination of what constitutes BART shall be specific to Units 3 & 4 and shall take into consideration the costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Failure to implement those control measures found to constitute BART shall be a violation of this permit. Compliance with the requirements of the consent decree entered 5/14/07 is deemed to satisfy this above requirement (Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07, EPA PSD Permit, and 40 CFR 52.21).

If there is a perceptible particulate plume on the Northern Cheyenne Tribe Reservation, as observed by an impartial observer designated by EPA, Talen shall review Units 3 & 4 for implementation of BART for PM control. Talen shall submit this analysis and a recommendation for appropriate control to EPA for review and approval. This BART determination by EPA shall be subject to a formal hearing on the record after due notice to Talen and the Northern Cheyenne Tribe. The determination of what constitutes BART shall be specific to Units 3 & 4 and shall take into consideration the costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the

use of such technology. Failure to implement those control measures found to constitute BART shall be a violation of this permit (EPA PSD Permit and 40 CFR 52.21).

C.22. Talen shall comply with all requirements in the Acid Rain Appendix H of this permit (ARM 17.8.1210).

C.23. Emissions shall not be permitted in excess of any allowances that Talen lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder (ARM 17.8.1210(3)(a)).

a. A permit revision is not required for increases in emissions authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement (ARM 17.8.1210(3)(b)).

b. Talen may not use allowances as a defense to noncompliance with any other applicable requirement (ARM 17.8.1210(3)(c)).

c. Any allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA (ARM 17.8.1210(3)(d)).

C.24. Talen shall install, operate, calibrate and maintain CEMS for the following:

a. A CEMS for the measurement of SO_2 shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

b. A CEMS for the measurement of NO_x shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

c. A CEMS for the measurement of diluent (CO_2 or oxygen) shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45);

d. A CEMS for the measurement of opacity shall be operated on each stack (ARM 17.8.340 and 40 CFR 60.45); and

e. Continuous monitoring for stack gas temperature, stack gas moisture (where necessary), megawatt production, and Btu per hour shall be performed on each unit (40 CFR 52.21 and 40 CFR 75.59).

f. Talen shall maintain the data acquisition system such that load data in megawatts is recorded no less than once per minute (ARM 17.8.749 and Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07).

C.25. Talen shall not exceed the heat input value of 6.63×10^7 MMBtu/yr averaged over any rolling 12-month period (ARM 17.8.749).

C.26. Talen shall provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at the Tangential Coal-fired Boilers, Units 3 & 4 for PM (ARM 17.8.1504).

Compliance Demonstration

C.27. Talen shall perform a Method 9 test or another method approved by the Department to monitor compliance with the opacity limitation in Section III.C.1. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.749 and ARM 17.8.106).

C.28. Talen shall operate and maintain the opacity CEM to monitor compliance with the opacity limitation in Section III.C.1 according to the Opacity CEMS Appendix E (ARM 17.8.1213).

C.29. Talen shall perform a Method 5 or Method 5B PM test, or another method approved by the Department, on the boilers annually to monitor compliance with the filterable PM fuel burning limitation in Section III.C.2 and III.C.3. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual and the heat input must be calculated in accordance with 40 CFR Part 75 Appendix F, §5. Procedures for Heat Input (ARM 17.8.106 and 40 CFR Part 75 Appendix F).

C.30. Talen shall operate and maintain the venturi scrubbers in accordance with manufacturer recommendations to control emissions on Units 3 & 4 in demonstrating compliance with filterable PM limitations (ARM 17.8.1213).

C.31. Talen shall perform a Method 6 or 6C test annually, to monitor compliance with the SO_2 limit in Section III.C.4. Heat input must be calculated in accordance with 40 CFR Part 75 Appendix F, §5. Procedures for Heat Input (ARM 17.8.1213 and 40 CFR Part 75, Appendix F).

C.32. Talen shall operate and maintain the SO_2 CEMS in accordance with the SO_2 CEMS Appendix F of this permit (ARM 17.8.1213).

C.33. Compliance with the sulfur in coal limit in Section III.C.9 shall be based on a weekly average of individual daily composite coal samples as measured by 40 CFR Part 60, Appendix A Method 19 or another sampling schedule as approved by the Department (ARM 17.8.1213 and BHES Findings of Fact and Conclusions of Law signed on November 21, 1975; this requirement is "State Only").

C.34. Talen shall perform a Method 7 or 7E test annually, to monitor compliance with the NO_x limit in Section III.C.4. Heat input must be calculated in accordance with 40 CFR Part 75 Appendix F, §5. Procedures for Heat Input (ARM 17.8.1213 and 40 CFR Part 75 Appendix F).

C.35. Talen shall operate and maintain the NO_x CEMS in accordance with the NO_x CEMS Appendix G of this permit (ARM 17.8.1213).

C.36. Talen shall maintain a log of any exceedance of NO_x when burning fuel other than coal as required by Section III.C.12. The Department will compare the calculated emission limit with the results from the NO_x CEMS (ARM 17.8.1213).

C.37. Talen shall monitor compliance with the applicable emission limitations in Section III.C.15, work practice standards in Section III.C.16, and the operating limits in Section III.C.17 in accordance with 40 CFR Part 63, Subpart UUUUU. Continued compliance shall be demonstrated by conducting the required performance tests and monitoring in 40 CFR Part 63, Subpart UUUUU (ARM 17.8.1213, ARM 17.8.342 and 40 CFR Part 63, Subpart UUUUU).

C.38. Talen shall monitor compliance with Section III.C.21 as required by EPA in the consent decree entered May 14, 2007. As part of these requirements, Talen will maintain records demonstrating compliance with the NO_x emission control requirements contained in Section III.C.18 & C.19 (ARM 17.8.1213, ARM 17.8.749, and Consent Decree CV-07-40-BLG-RFC-CSO entered 5/14/07).

C.39. Talen shall monitor compliance with Section III.C.22 and C.23 as required by Appendix H – Acid Rain Appendix (ARM 17.8.1213 and Appendix H).

C.40. Compliance with the heat input limit of Section III.C.25 shall be monitored based on the total tons of coal combusted in each of the boilers multiplied by a representative average Btu content for the coal. Talen shall document, by month, the total fuel combusted in each boiler. By the 25th day of each month, Talen shall calculate the tons of coal combusted for the previous month. The monthly information will be used to verify compliance with the rolling 12-month limitation in Section III.C.25. The information for each of the previous 12 months shall be submitted to the Department along with the either the annual emission inventory or with other periodic reports as approved by the Department. The coal analysis shall be done as required by the NO_x CEMS Appendix G, Section 5, 6, and 7 (ARM 17.8.1213).

C.41. All continuous monitors shall be operated, excess emissions reported, and performance tests conducted, in accordance with the requirements of 40 CFR Part 60, Subpart D, 40 CFR 60.7, 60.8, 60.11, 60.13, and 40 CFR Part 60 Appendix B Performance Specifications #1, #2, and #3 subject to the following:

a. The requirements of 40 CFR 60.48Da – Compliance Provisions (40 CFR Part 60, Subpart Da) shall apply to Units 3 & 4 (40 CFR 52.21);

b. The requirements of 40 CFR 60.49Da – Emissions Monitoring (40 CFR Part 60, Subpart Da) shall apply to Units 3 & 4 (40 CFR 52.21);

c. The requirements of 40 CFR 60.50Da – Compliance Determination Procedure and Methods (40 CFR Part 60, Subpart Da) shall apply to Units 3 & 4 (40 CFR 52.21);

d. The requirements of 40 CFR 60.51Da – Reporting Requirements (40 CFR Part 60, Subpart Da) shall apply to Units 3 & 4 (40 CFR 52.21);

e. Talen shall operate the required monitors in accordance with the CEMS quality assurance (QA) plan submitted to the EPA in May 1998, unless an updated plan is accepted by the EPA. This plan may be revised by Talen with approval of the Department (40 CFR 52.21);

f. Compliance requirements of 40 CFR 60.11(a) shall be amended per Section III.C.24 (40 CFR 52.21);

g. Each monitor modular part (i.e., opacity, SO_2, NO_x, diluent, and data handling units) of a continuous monitoring system shall attain a minimum annual on-line availability time of 85% on a minimal quarterly availability of 75% for each individual quarter. Should any given yearly or quarterly availability time drop below these respective limits, Talen shall, within 90 days of the end of the first unexcused year or quarter, cause to be delivered to the facility factory tested and compatible monitor module(s) which had unacceptable availability times, unless Talen can excuse the unacceptable performance by demonstrating, within ten calendar days of the end of such year or quarter, that the reason for the poor availability time has not caused another previous occurrence of unacceptable availability in question will be prevented in the future by a more effective maintenance/inventory program (40 CFR 52.21);

h. Upon two non-overlapping periods of unexcused, unacceptable availability of a module (yearly, quarterly or combination), Talen shall within 30 days of the end of the year or quarter of the second unacceptable availability period, install, calibrate, operate, maintain, and report emission data using the second compatible module required by (g) above (40 CFR 52.21);

i. Within 60 days of the year or the quarter causing the second unacceptable availability period under Section (h) above, Talen shall conduct a complete performance evaluation of the entire CEMS for that pollutant under 40 CFR 60.13(c) showing acceptability of the entire CEMS in question unless the module was the data handling unit alone. Within 75 days of the end of the year or quarter causing the second unacceptable availability period, Talen shall furnish the Department with a written report of such evaluations and tests demonstrating acceptability of the system (40 CFR 52.21); and

j. In the event of a conflict between the requirements of the above-referenced federal regulations [specifically 40 CFR Part 60, Subpart Da] and the requirements of this permit, the requirements of this permit shall apply.

C.42. Talen shall monitor compliance by following the CAM Plan (Appendix I). The CAM Plan, written by Talen in accordance with ARM 17.8.1504, is included in Appendix I of the permit. (ARM 17.8.1213 and ARM 17.8.1503).

Recordkeeping

C.43. Talen shall maintain, on site, a log of the results of the daily composite coal samples as required by Section III.C.33 and submit them to the Department upon request (ARM 17.8.1212).

C.44. Talen shall maintain, on site, a log to record the emission limit calculations when burning fuel other than coal (ARM 17.8.1212).

C.45. Talen shall complete all recordkeeping for Section III.C.21 and III.C.38 as required by EPA (ARM 17.8.1212).

C.46. Records shall be prepared and data kept in accordance with the Opacity CEMS Appendix E of this permit (ARM 17.8.1212).

C.47. Talen shall prepare and maintain records of all inspection, maintenance, and operation activities associated with the venturi scrubbers (ARM 17.8.1212).

C.48. All source-testing recordkeeping shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. Method 9 source test reports for opacity need not be submitted unless requested by the Department (ARM 17.8.106).

C.49. Records shall be prepared and data kept in accordance with 40 CFR Part 75 and Acid Rain Appendix H, the SO_2 CEMS Appendix F, and the NO_x CEMS Appendix G of this permit (ARM 17.8.1212 and 40 CFR Parts 72-78).

C.50. Talen shall complete all recordkeeping for Section III.C.22 and C.23 as required by the Acid Rain Appendix H in this permit (ARM 17.8.1212).

C.51. Talen shall maintain on-site records for the CEMS and the stack parameter data as required in Section III.C.41 (ARM 17.8.1212).

C.52. Records shall be prepared and data kept in accordance with 40 CFR Part 64 and the CAM Plan Appendix I of this permit (ARM 17.8.1212 and 40 CFR Part 64).

C.53. Records shall be prepared and data kept in accordance with the recordkeeping requirements of 40 CFR Part 63, Subpart UUUUU (ARM 17.8.1212 and 40 CFR 63, Subpart UUUUU).

C.54. Talen shall maintain, as a permanent business record under its control for at least 5 years, all records required for compliance monitoring. Furthermore, the records must be available at the plant site for inspection by the Department and EPA, and must be submitted to the Department upon request (ARM 17.8.1212 and 40 CFR Part 63, Subpart UUUUU).

Reporting

C.55. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

C.56. Talen shall meet the applicable reporting requirements of 40 CFR 63, Subpart UUUUU and Section III.C.15 of this Operating Permit (ARM 17.8.1212 and 40 CFR Part 63, Subparts A and UUUUU).

C.57. The semiannual monitoring report shall provide (ARM 17.8.1212):

a. A summary of the log of daily composite coal samples;

b. A summary of any Method 9, 5, 5B, 6, 6C, 7, or 7E test conducted during the period; the actual test report for Method 9 tests need only be submitted to the Department upon request, as specified by Section III.C.27;

c. A compliance report meeting the applicable reporting requirements of 40 CFR Part 63, Subpart UUUUU and Section III.C.15 of this Operating Permit;

d. A summary of the stack parameter data and any other reports as required by Section III.C.51; and

e. A summary of the log required by Section III.C.36.

C.58. Talen shall submit a written report of excess emission and monitoring system performance as required by 40 CFR 60.7(c). For the purposes of the report, excess emission shall be defined as any 6-minute, 3-hour, 24-hour, or 30-day period as applicable, for which the average emissions of the period of concern for opacity, NO_x, SO_2, as measured by the CEMS, exceed the applicable emissions for the periods as follows:

a. 6-minute average applies to each 6-minute non-overlapping period starting on the hour;

b. 3-hour period applies to any running 3-hour period containing 3 contiguous one-hour periods, starting on the hour;

c. 24-hour period applies to any calendar day; and

d. 30-day period applies to any running period of 30 consecutive operating calendar days.

C.59. Talen shall submit the following information along with the excess emission reports:

a. The fuel feed rate and associated production figures corresponding to all periods of excess emissions (40 CFR 52.21);

b. The proximate analysis of the weekly composite sample of the fuel fired in each unit (40 CFR 52.21); and

c. Date, time and initial calibration values for each required calibration adjustment made on any monitor during the quarter, including any time in which the monitor was removed or inoperable for any reason (40 CFR 52.21).

D. EU007, EU008, and EU009– Coal Handling Systems (Units 1 & 2 – Enclosed conveyors, dust suppressant, telescopic chute), Coal Handling Systems (Units 3 & 4 – silos, distribution bin, surge pile tunnel, crushing and sampling house, and vacuum cleaning system) and Coal Piles

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Frequency	Reporting Requirements
D.1, D.2, D.5, D.6, D.7, D.9, D.10, D.12, D.13	Opacity	20%	Visual Survey/Method 9	Weekly	Semiannually
D.3, D.6, D.9, D.10, D.12, D.13	PM	$E = 55 * p^{0.11} - 40$	Visual Survey/Method 9	Weekly	
D.4, D.8, D.11, D.12, D.13	Uncovered coal storage piles	Sealed	Operation of controls	Ongoing	

Conditions

D.1. Talen may not cause or authorize emissions from the Coal Handling Systems and Coal Piles to be discharged into the outdoor atmosphere that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

D.2. Talen shall not cause or authorize the production, handling transportation, or storage of any material unless reasonable precautions to control emissions of PM are taken. Such emissions of airborne particulate from any stationary source shall not exhibit an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.308(1)).

D.3. The particulate emissions from process weight shall not exceed the value calculated by $E = 55.0 * p^{0.11} - 40$, where E = Emissions in pounds per hour and P = process weight rate in tons per hour (ARM 17.8.310).

D.4. Uncovered coal storage piles, which are not routinely in use, must be sealed to prevent airborne emissions (ARM 17.8.749).

Compliance Demonstration

D.5. Talen shall conduct a weekly visual survey of visible emissions on the Coal Handling System. Once per calendar week, during daylight hours, Talen shall visually survey the Coal Handling System for any visible emissions. If visible emissions are observed during the visual survey, Talen must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, Talen shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then Talen shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test

performed) and any corrective action taken in a log. Conducting a visual survey does not relieve Talen of the liability for a violation determined using Method 9 (ARM 17.8.1213).

D.6. For Units 3 & 4, Talen shall use a dust suppression system using chemical or water sprays in Lowering Well "A", Lowering Well "B", the coal at transfer points in area "C" transfer house, and the vibratory feeders associated with Conveyor 80A as necessary to monitor compliance with Section III.D.2 (ARM 17.8.1213).

D.7. For Units 1 & 2, Talen shall use enclosed conveyors to contain dust from handling and crushing materials. An enclosed drop chute with elevation doors shall be used to contain dust from materials falling from Lowering Wells #6, and #7. Dust suppressant shall be used as necessary to reduce particulate emission from coal (ARM 17.8.1213).

D.8. Talen shall maintain an onsite log of all actions taken to monitor compliance with Section III.D.4. The log should include the action taken along with the date and time the action occurred (ARM 17.8.1213).

Recordkeeping

D.9. All source test recordkeeping shall be performed in accordance with the test method used and the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. The reports must be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

D.10. Talen shall maintain on-site a log containing all visual observations monitoring compliance with the visual survey requirement(s). The log shall include, at a minimum, the required information, the date, the time, and the initials of the documenting personnel (ARM 17.8.1212).

D.11. Recordkeeping of the log required in Section III.D.8 shall be maintained on site (ARM 17.8.1212).

Reporting

D.12. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

D.13. The semiannual monitoring report shall provide a (ARM 17.8.1212):

a. Summary of all visual observations monitoring compliance with the visual survey requirements; and

b. Summary of the log relating to the actions taken on the uncovered coal piles.

E. EU010 – Emergency Engines

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
E.1, E.6, E.8, E.11, E.12, E.16, E.17, E.18	Opacity	20%	Visual Survey/Method 9	Weekly	Semiannually
E.2, E.7, E.11, E.13, E.15, E.16, E.17, E.18	Particulate from fuel combustion	$E = 1.026 * H^{-0.233}$	Method 5	As required by the Department and Section III.A.1	Semiannually
E.3, E.8, E.11, E.13, E.17, E.18	Hours of Operation	Operations Limited to Specific Situations	Operating Log	Monthly	Semiannually
E.4, E.9, E.14, E.17, E.19	40 CFR Part 60, Subparts IIII & JJJJ	40 CFR Part 60, Subparts IIII & JJJJ	40 CFR Part 60, Subparts IIII & JJJJ	40 CFR Part 60, Subparts IIII & JJJJ	40 CFR Part 60, Subparts IIII & JJJJ
E.5, E.10, E.15, E.17, E.20	40 CFR Part 63, Subpart ZZZZ	40 CFR Part 63, Subpart ZZZZ	40 CFR Part 63, Subpart ZZZZ	40 CFR Part 63, Subpart ZZZZ	40 CFR Part 63, Subpart ZZZZ

Conditions

E.1. Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source that exhibits an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

E.2. Talen shall not cause or authorize PM caused by the combustion of fuel to be discharged from any stack or chimney into the outdoor atmosphere in excess of $E = 1.026 * H^{-0.233}$ for existing fuel burning equipment, where H = heat input capacity in MMBtu/hr and E maximum allowable emission rate in lbs/MMBtu (ARM 17.8.309).

E.3. Talen shall limit the use of the emergency diesel engines to times of need for emergency power generation or up to 100 hours per year for maintenance and testing in accordance with 40 CFR 63, Subpart ZZZZ (ARM 17.8.342, 40 CFR 63, Subpart ZZZZ, and ARM 17.8.749).

E.4. Talen shall comply with all applicable standards and limitations, and the reporting, recordkeeping, and notification requirements contained in 40 CFR Part 60, Subpart IIII, *Standards of Performance for Stationary Compression Ignition Internal Combustion Engines* & Subpart JJJJ, *Standards of Performance for Stationary Spark Ignition Internal Combustion Engines*, for any applicable engine (ARM 17.8.340 and 40 CFR Part 60, Subparts IIII & JJJJ).

E.5. Talen shall comply with all applicable standards and limitations, and the reporting, recordkeeping, and notification requirements contained in 40 CFR Part 63, Subpart ZZZZ, *National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*, for any applicable engine (ARM 17.8.342 and 40 CFR Part 63, Subpart ZZZZ).

Compliance Demonstration

E.6. Only in times of engine operations, Talen shall conduct a weekly visual survey (during daylight hours) of visible emissions on the emergency diesel engines. If visible emissions are observed during the visual survey, Talen must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, Talen shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then Talen shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test performed) and any corrective action taken in a log. Conducting a visual survey does not relieve Talen of the liability for a violation determined using Method 9 (ARM 17.8.1213).

E.7. As required by the Department and Section III.A.1, Talen shall perform a Method 5 in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

E.8. Compliance with the limits in Section III.E.3 shall be demonstrated by logging the date, time, hours of operation, reason for use, and operator's initials whenever the emergency diesel engines are used. Talen shall clearly specify within this log the hours of operation for maintenance and testing purposes, or maintain a separate log for this information (ARM 17.8.1213).

E.9. Compliance monitoring shall be performed in accordance with 40 CFR Part 60, Subparts IIII & JJJJ, as applicable (ARM 17.8.340 and 40 CFR Part 60, Subparts IIII & JJJJ).

E.10. Compliance monitoring shall be performed in accordance with 40 CFR Part 63, Subpart ZZZZ, as applicable (ARM 17.8.342 and 40 CFR Part 63, Subpart ZZZZ).

Recordkeeping

E.11. All source test recordkeeping shall be performed in accordance with the test method used and the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. The reports must be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

E.12. Talen shall maintain on-site a log containing all visual observations monitoring compliance with the visual survey requirement(s). The log shall include, at a minimum, the required information, the date, the time, and the initials of the documenting personnel (ARM 17.8.1212).

E.13. Talen shall maintain on site a log as described in Section III.E.8. Talen shall log the monthly sum of the total hours of operation of the emergency engines for the previous rolling 12-month time period. Talen shall clearly specify within this log the hours of operation for maintenance and testing purposes, or maintain a separate log for this information (ARM 17.8.1212).

E.14. Recordkeeping shall be performed in accordance with 40 CFR Part 60, Subparts IIII & JJJJ, as applicable (ARM 17.8.340 and 40 CFR Part 60, Subparts IIII & JJJJ).

E.15. Recordkeeping shall be performed in accordance with 40 CFR Part 63, Subpart ZZZZ, as applicable (ARM 17.8.342 and 40 CFR Part 63, Subpart ZZZZ).

Reporting

E.16. All source test reports must be submitted to the Department in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

E.17. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

E.18. The semiannual monitoring report shall provide (ARM 17.8.1212):

a. A summary of all visual observations monitoring compliance with the visual survey requirement(s);

b. A summary of any Method 5 tests that were conducted; and

c. A summary of emergency engine use including a summary of hours used and reason for use.

E.19. Reporting shall be performed in accordance with 40 CFR Part 60, Subparts IIII & JJJJ, as applicable (ARM 17.8.340 and 40 CFR Part 60, Subparts IIII & JJJJ).

E.20. Reporting shall be performed in accordance with 40 CFR Part 63, Subpart ZZZZ, as applicable (ARM 17.8.342 and 40 CFR Part 63, Subpart ZZZZ).

F. EU012 - Lime Handling System

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
F.1, F.4, F.6, F.9, F.10	Reasonable Precautions	20%	Operation of controls	Ongoing	Semiannually
F.2, F.5, F.7, F.9, F.10	Opacity	20%	Visual Survey/Method 9	Weekly	
F.3, F.5, F.8, F.9, F.10	PM	$E = 55 * p^{0.11} - 40$	Visual Survey/Method 9	Weekly	

Conditions

F.1. Talen shall not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne PM are taken (ARM 17.8.308(1)).

F.2. Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source that exhibits an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

F.3. The particulate emissions from process weight shall not exceed the value calculated by $E = 55.0 * P^{0.11} - 40$, where E is the rate of emissions in pounds per hour and P is the process weight rate in tons per hour (ARM 17.8.310).

Compliance Demonstration

F.4. Talen shall operate the pneumatic system when unloading lime to monitor compliance with the reasonable precautions requirement (ARM 17.8.1213).

F.5. Talen shall conduct a weekly visual survey of visible emissions on the Lime Handling System. Once per calendar week, during daylight hours, Talen shall visually survey the Lime Handling System for any visible emissions. If visible emissions are observed during the visual survey, Talen must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, Talen shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then Talen shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test performed) and any corrective action taken in a log, Conducting a visual survey does not relieve Talen of the liability for a violation determined using Method 9 (ARM 17.8.1213).

Recordkeeping

F.6. Talen shall maintain a log of the operation of the pneumatic system as required in Section III.F.4. The log shall include date and time of operation of the pneumatic conveyor coinciding with the unloading of lime (ARM 17.8.1212).

F.7. All source test recordkeeping shall be performed in accordance with the test method used and the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. The reports must be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

F.8. Talen shall maintain on-site a log containing all visual observations monitoring compliance with the visual survey requirement(s). The log shall include, at a minimum, the required information, the date, the time, and the initials of the documenting personnel (ARM 17.8.1212).

Reporting

F.9. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

F.10. The semiannual monitoring report shall provide (ARM 17.8.1212):

a. A summary of the log of operation of the pneumatic system as required in Section III.F.6; and

b. A summary of all visual observations monitoring compliance with the visual survey requirement(s).

G. EU013 - Plant Roads; EU014 – Process Ponds

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
G.1, G.3–G.7	Reasonable Precautions	20%	Visual Surveys/Method 9	Weekly	Semiannually
G.2– G.7	Opacity	20%	Visual Surveys/ Method 9	Weekly	

Conditions

G.1. Talen shall not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne PM are taken (ARM 17.8.308).

G.2. Talen may not cause or authorize emissions from the plant roads to be discharged into the outdoor atmosphere that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

Compliance Demonstration

G.3. Talen shall conduct a weekly visual survey of visible emissions on the plant roads and process ponds. Once per calendar week, during daylight hours, Talen shall visually survey the plant roads and process ponds for any visible emissions. If visible emissions are observed during the visual survey, Talen must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, Talen shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then Talen shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test performed) and any corrective action taken in a log. Conducting a visual survey does not relieve Talen of the liability for a violation determined using Method 9 (ARM 17.8.1213).

Recordkeeping

G.4. All source test recordkeeping shall be performed in accordance with the test method used and the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. The reports must be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

G.5. Talen shall maintain on-site a log containing all visual observations monitoring compliance with the visual survey requirement(s). The log shall include, at a minimum, the required information, the date, the time, and the initials of the documenting personnel (ARM 17.8.1212).

Reporting

G.6. The annual compliance certification report required and logged as specified by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

G.7. The semiannual monitoring report shall provide a summary of all visual observations monitoring compliance with the visual survey requirement(s) (ARM 17.8.1212).

H. EU015 – Underground Gasoline Tank

Condition(s)	Pollutant/Parameter	Permit Limit	Compliance Demonstration Method	Compliance Demonstration Frequency	Reporting Requirements
H.1, H.3, H.5, H.7, H.8, H.9	Opacity	20%	Method 9	As required by the Department and Section III.A.1	Semiannually
H.2, H.4, H.6, H.8, H.9	Underground gasoline tank	250 gallons or > gasoline in tank	Submerged fill pipe	Ongoing/when loading	

Conditions

H.1. Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source that exhibits an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

H.2. Talen shall not load or permit the loading of gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device or is a pressure tank (ARM 17.8.324(3)).

Compliance Demonstration

H.3. As required by the Department and Section III.A.1, Talen shall perform a Method 9 test to monitor compliance with the permit limit in Section III.H.1. The testing shall be performed in accordance with the Montana Source Test Protocol and Procedures Manual, or another method approved by the Department (ARM 17.8.106 and ARM 17.8.749).

H.4. Talen has an installed tank with a permanently submerged fill pipe and shall continue to operate the submerged fill pipe during loading (ARM 17.8.749).

Recordkeeping

H.5. All compliance source-testing recordkeeping shall be performed in accordance with the Source Test Protocol and Procedures Manual, and shall be maintained on site. Method 9 source test reports for opacity need not be submitted unless requested by the Department (ARM 17.8.106).

H.6. Talen shall maintain a log to monitor continuous use of the submerged fill pipe by maintaining a log of tank loading. The log shall include the date and time of loading, and state that a permanent submerged fill pipe was used or that the tank is equipped with a vapor loss control device or is a pressure tank (ARM 17.8.1213).

Reporting

H.7. Method 9 test reports as specified in Section III.H.5 shall be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

H.8. The annual compliance certification report required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

H.9. The semiannual monitoring report shall provide (ARM 17.8.1212):

a. A summary of any instances that the submerged fill pipe (or vapor loss control) was not used during tank loading, including date, time, and duration of loading; and

b. A summary of any Method 9 test conducted during the period.

I. EU017 – Tangential Coal Fired Units 1-4 Mercury Emissions

Condition(s)	Pollutant/ Parameter	Permit Limit	Compliance Demonstration Method	Frequency	Reporting Requirements
I.1, I.2, I.3, I.4, I.5, I.6, I.7, I.8, I.9	Mercury Emissions	0.9 lb/TBtu and Installation/ Operation of Mercury Control System	MEMS	Ongoing	Quarterly

Conditions

I.1. Beginning January 1, 2010, facility-wide emissions of mercury (Hg) shall not exceed 0.9 pounds per trillion British thermal units (lb/TBtu), calculated as a rolling 12-month average. The facility-wide emissions shall be calculated according to the following equation (ARM 17.8.771, this requirement is "State Only"):

$$\text{Facility-wide Hg emissions} = (1/4) \times (\text{Unit1}_{\text{lb/TBtu}} + \text{Unit2}_{\text{lb/TBtu}} + \text{Unit3}_{\text{lb/TBtu}} + \text{Unit4}_{\text{lb/TBtu}})$$

Where: $\text{Unit1}_{\text{lb/TBtu}}$ = rolling 12-month mercury emissions from Unit 1 as an average of the last 12 individual calendar monthly averages.

$\text{Unit2}_{\text{lb/TBtu}}$ = rolling 12-month mercury emissions from Unit 2 as an average of the last 12 individual calendar monthly averages.

$\text{Unit3}_{\text{lb/TBtu}}$ = rolling 12-month mercury emissions from Unit 3 as an average of the last 12 individual calendar monthly averages.

$\text{Unit4}_{\text{lb/TBtu}}$ = rolling 12-month mercury emissions from Unit 4 as an average of the last 12 individual calendar monthly averages.

I.2. On each Unit 1-4, Talen shall install a mercury control system that oxidizes and sorbs emissions of mercury. Talen shall implement the operation and maintenance of mercury control systems on or before January 1, 2010 (ARM 17.8.771, this requirement is "State Only").

Compliance Demonstration

I.3. Talen shall comply with all applicable standards and limitations, and the applicable operating, reporting, recordkeeping, and notification requirements contained in 40 CFR Part 75 or as approved by the Department (ARM 17.8.771, this requirement is "State Only").

I.4. Enforcement of Section III.I.1., where applicable, shall be determined by utilizing data taken from Mercury Emission Monitoring Systems (MEMS), installed on each Unit 1-4. The MEMS shall be comprised of equipment as required in 40 CFR 75.81(a) and defined in 40 CFR 72.2. The above does not relieve Talen from meeting any applicable requirements of 40 CFR Part 75. Testing requirements shall be as specified in 40 CFR Part 75, and shall conform to the requirements of the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106 and ARM 17.8.771, this requirement is "State Only").

I.5. The MEMS shall be installed, certified, and operating on each Unit 1-4 stack outlet on or before January 1, 2010. MEMS shall comply with the applicable provisions of 40 CFR Part 75. The monitors shall also conform with requirements included in Appendix J (ARM 17.8.771, this requirement is "State Only").

Recordkeeping

I.6. Talen shall conduct recordkeeping pursuant to Appendix J (ARM 12.8.1212, this requirement is "State Only").

Reporting

I.7. Talen shall report to the Department within 30 days after the end of each calendar quarter, as described in Appendix J (ARM 17.8.749, this requirement is "State Only"):

a. For each Unit 1-4, the monthly average lb/TBtu mercury emission rate, for each month of the quarter;

b. For each Unit 1-4, the 12-month rolling average lb/TBtu mercury emission rate, for each month of the reporting quarter;

c. The 12-month facility-wide rolling average lb/TBtu mercury emission rate, calculated according to Section III.I.1, for each month of the reporting quarter; and

d. For each Unit 1-4, the number of operating hours that the MEMS were unavailable or not operating within quality assurance limits (monitor downtime).

I.8. The first quarterly report must be received by the Department by April 30, 2010, but shall not include 12-month rolling averages. The first quarterly report to include 12-month rolling averages must be received by the Department by January 30, 2011 (ARM 17.8.749).

I.9. The annual compliance certification required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

J. EU018 – Mercury Oxidizer/Sorbent Handling Systems (Units 1-4)

Condition(s)	Pollutant/ Parameter	Permit Limit	Compliance Demonstration		Reporting Requirements
			Method	Frequency	
J.1, J.3, J.4, J.5, J.6, J.7, J.8	Opacity	20%	Visual Survey/ Method 9	Weekly	Semiannual
J.2, J.3, J.4, J.5, J.6, J.7, J.8	Oxidizer/Sorbent Handling System	Operate/ maintain bin vent			

Conditions

J.1. Talen shall not cause or authorize emissions to be discharged into the outdoor atmosphere from any source that exhibits an opacity of 20% or greater averaged over 6 consecutive minutes (ARM 17.8.304(2)).

J.2. Talen shall operate and maintain the mercury oxidizer/sorbent handling systems, including the bin vent filter systems, to provide the maximum air pollution control for that which the systems were designed (ARM 17.8.749).

Compliance Demonstration

J.3. Talen shall conduct a weekly visual survey of visible emissions on the Mercury Oxidizer/Sorbent Handling System. Once per calendar week, during daylight hours, Talen shall visually survey the Mercury Oxidizer/Sorbent Handling System for any visible emissions. If visible emissions are observed during the visual survey, Talen must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, Talen shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then Talen shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test performed) and any corrective action taken in a log. Conducting a visual survey does not relieve Talen of the liability for a violation determined using Method 9 (ARM 17.8.1213).

Recordkeeping

J.4. All source test recordkeeping shall be performed in accordance with the test method used and the Montana Source Test Protocol and Procedures Manual, and shall be maintained on site. The reports must be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106).

J.5. Talen shall maintain on-site a log containing all visual observations monitoring compliance with the visual survey requirement(s). The log shall include, at a minimum, the required information, the date, the time, and the initials of the documenting personnel (ARM 17.8.1212).

Reporting

J.6. All method reports shall be submitted in accordance with the Montana Source Test Protocol and Procedures Manual (ARM 17.8.106 and ARM 17.8.1212).

J.7. The annual compliance certification required by Section V.B must contain a certification statement for the above applicable requirements (ARM 17.8.1212).

J.8. The semiannual monitoring report shall provide a summary of all visual observations monitoring compliance with the visual survey requirement(s) (ARM 17.8.1212).

SECTION IV. NON-APPLICABLE REQUIREMENTS

Air Quality Administrative Rules of Montana (ARM) and Federal Regulations identified as not applicable to the facility or to a specific emissions unit at the time of the permit issuance are listed below (ARM 17.8.1214). The following list does not preclude the need to comply with any new requirements that may become applicable during the permit term.

A. Facility-Wide

The following table contains non-applicable requirements, which are administrated by the Air Resources Management Bureau of the Department of Environmental Quality.

Rule Citation	Reason
40 CFR Part 60 Subparts C, Ca, Cb 40 CFR Part 60 Subparts Da, Db, Dc 40 CFR Part 60 Subparts E-J 40 CFR Part 60 Subparts K, Ka, Kb 40 CFR Part 60 Subparts L-Z 40 CFR Part 60 Subparts AA-EE 40 CFR Part 60 Subparts GG-HH 40 CFR Part 60 Subparts KK-NN 40 CFR Part 60 Subparts PP-XX 40 CFR Part 60 Subparts AAA-BBB 40 CFR Part 60 Subparts DDD 40 CFR Part 60 Subparts FFF-LLL 40 CFR Part 60 Subparts NNN-VVV 40 CFR Part 61 Subparts B-F 40 CFR Part 61 Subparts H-L 40 CFR Part 61 Subparts N-T 40 CFR Part 61 Subparts V-W 40 CFR Part 61 Subpart Y 40 CFR Part 61 Subpart BB 40 CFR Part 61 Subpart FF 40 CFR Part 63 Subparts F-I 40 CFR Part 63 Subparts L-O 40 CFR Part 63 Subpart Q 40 CFR Part 63 Subpart R 40 CFR Part 63 Subpart T 40 CFR Part 63 Subpart W 40 CFR Part 63 Subpart X 40 CFR Part 63 Subpart EE	These requirements are not applicable because the facility is not an affected source as defined in these regulations.
40 CFR Part 82 Subpart A 40 CFR Part 82 Subpart C 40 CFR Part 82 Subpart D 40 CFR Part 82 Subpart E 40 CFR Part 82 Subpart G	The facility does not conduct the activities addressed by these regulations.

B. Emission Units

Emission Units	Rule Citation		Reason
	State	Federal	
EU005, EU006, EU007, EU008, EU009, EU013		40 CFR Part 60 Subpart D 40 CFR Part 82 Subpart B 40 CFR Parts 72-73 40 CFR Parts 75-78	This emitting unit is not in the source category or the equipment is not used at the facility
EU001, EU002, EU003, EU004		40 CFR Part 73 Subpart G 40 CFR Part 82 Subpart B	

SECTION V. GENERAL PERMIT CONDITIONS

A. Compliance Requirements

ARM 17.8, Subchapter 12, Operating Permit Program §1210(2)(a)-(c)&(e), §1206(6)(c)&(b)

1. The permittee must comply with all conditions of the permit. Any noncompliance with the terms or conditions of the permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under ARM Title 17, Chapter 8, Subchapter 12.

2. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. If appropriate, this factor may be considered as a mitigating factor in assessing a penalty for noncompliance with an applicable requirement if the source demonstrates that both the health, safety or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations, and that such health, safety or environmental impacts were unforeseeable and could not have otherwise been avoided.

4. The permittee shall furnish to the Department, within a reasonable time set by the Department (not to be less than 15 days), any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of those records that are required to be kept pursuant to the terms of the permit. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the Department, as provided in 75-2-105, MCA.

5. Any schedule of compliance for applicable requirements with which the source is not in compliance with at the time of permit issuance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it was based.

6. For applicable requirements that will become effective during the permit term, the source shall meet such requirements on a timely basis unless a more detailed plan or schedule is required by the applicable requirement or the Department.

B. Certification Requirements

ARM 17.8, Subchapter 12, Operating Permit Program §1207 and §1213(7)(a)&(c)-(d)

1. Any application form, report, or compliance certification submitted pursuant to ARM Title 17, Chapter 8, Subchapter 12, shall contain certification by a responsible official of truth, accuracy and completeness. This certification and any other certification required under ARM Title 17, Chapter 8, Subchapter 12, shall state that, based on information and belief

formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

2. Compliance certifications shall be submitted by February 15 of each year, or more frequently if otherwise specified in an applicable requirement or elsewhere in the permit. Each certification must include the required information for the previous calendar year (i.e., January 1 – December 31).

3. Compliance certifications shall include the following:

   a. The identification of each term or condition of the permit that is the basis of the certification;

   b. The identification of the method(s) or other means used by the owner or operator for determining the status of compliance with each term or condition during the certification period, and whether such methods or other means provide continuous or intermittent data, as well as the additional information required by ARM 17.8.1213(7)(c)(ii);

   c. The status of compliance with the terms and conditions of the permit for the period covered by the certification, *including whether compliance during the period was continuous or intermittent* (based on the method or means designated in ARM 17.8.1213(7)(c)(ii), as described above); and

   d. Such other facts as the Department may require to determine the compliance status of the source.

4. All compliance certifications must be submitted to the EPA, as well as to the Department, at the addresses listed in the Notification Addresses Appendix of this permit.

C. Permit Shield

ARM 17.8, Subchapter 12, Operating Permit Program §1214(1)-(4)

1. The applicable requirements and non-federally enforceable requirements are included and specifically identified in this permit and the permit includes a precise summary of the requirements not applicable to the source. Compliance with the conditions of the permit shall be deemed compliance with any applicable requirements and any non-federally enforceable requirements as of the date of permit issuance.

2. The permit shield described in 1 above shall remain in effect during the appeal of any permit action (renewal, revision, reopening, or revocation and reissuance) to the Board of Environmental Review (Board), until such time as the Board renders its final decision.

3. Nothing in this permit alters or affects the following:

   a. The provisions of 42 U.S.C. Sec. 7603 of the FCAA, including the authority of the administrator under that section;

   b. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

c. The applicable requirements of the Acid Rain Program, consistent with 42 U.S.C. Sec. 7651g(a) of the FCAA;

d. The ability of the administrator to obtain information from a source pursuant to 42 U.S.C. Sec. 7414 of the FCAA;

e. The ability of the Department to obtain information from a source pursuant to the Montana Clean Air Act, Title 75, Chapter 2, MCA;

f. The emergency powers of the Department under the Montana Clean Air Act, Title 75, Chapter 2, MCA; and

g. The ability of the Department to establish or revise requirements for the use of Reasonably Available Control Technology (RACT) as defined in ARM Title 17, Chapter 8. However, if the inclusion of a RACT into the permit pursuant to ARM Title 17, Chapter 8, Subchapter 12, is appealed to the Board, the permit shield, as it applies to the source's existing permit, shall remain in effect until such time as the Board has rendered its final decision.

4. Nothing in this permit alters or affects the ability of the Department to take enforcement action for a violation of an applicable requirement or permit term demonstrated pursuant to ARM 17.8.106, Source Testing Protocol.

5. Pursuant to ARM 17.8.132, for the purpose of submitting a compliance certification, nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance. However, when compliance or noncompliance is demonstrated by a test or procedure provided by permit or other applicable requirements, the source shall then be presumed to be in compliance or noncompliance, unless that presumption is overcome by other relevant credible evidence.

6. The permit shield will not extend to minor permit modifications or changes not requiring a permit revision (see Sections I & J).

7. The permit shield will extend to significant permit modifications and transfer or assignment of ownership (see Sections K & N).

D. Monitoring, Recordkeeping, and Reporting Requirements
ARM 17.8, Subchapter 12, Operating Permit Program §1212(2)&(3)

1. Unless otherwise provided in this permit, the permittee shall maintain compliance monitoring records that include the following information:

   a. The date, place as defined in the permit, and time of sampling or measurement;

   b. The date(s) analyses were performed;

   c. The company or entity that performed the analyses;

   d. The analytical techniques or methods used;

e. The results of such analyses; and

f. The operating conditions at the time of sampling or measurement.

2. The permittee shall retain records of all required monitoring data and support information for a period of at least 5 years after the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. All monitoring data, support information, and required reports and summaries may be maintained in computerized form at the plant site if the information is made available to Department personnel upon request, which may be for either hard copies or computerized format. Strip-charts must be maintained in their original form at the plant site and shall be made available to Department personnel upon request.

3. The permittee shall submit to the Department, at the addresses located in the Notification Addresses Appendix of this permit, reports of any required monitoring by February 15 and August 15 of each year, or more frequently if otherwise specified in an applicable requirement or elsewhere in the permit. The monitoring report submitted on February 15 of each year must include the required monitoring information for the period of July 1 through December 31 of the previous year. The monitoring report submitted on August 15 of each year must include the required monitoring information for the period of January 1 through June 30 of the current year. All instances of deviations from the permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official, consistent with ARM 17.8.1207.

E. Prompt Deviation Reporting

ARM 17.8, Subchapter 12, Operating Permit Program §1212(3)(b)

The permittee shall promptly report deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported to the Department within the following timeframes (unless otherwise specified in an applicable requirement):

1. For deviations which may result in emissions potentially in violation of permit limitations:

   a. An initial phone notification (or faxed or electronic notification) describing the incident within 24 hours (or the next business day) of discovery; and,

   b. A follow-up written, faxed, or electronic report within 30 days of discovery of the deviation that describes the probable cause of the reported deviation and any corrective actions or preventative measures taken.

2. For deviations attributable to malfunctions, deviations shall be reported to the Department in accordance with the malfunction reporting requirements under ARM 17.8.110; and

3. For all other deviations, deviations shall be reported to the Department via a written, faxed, or electronic report within 90 days of discovery (as determined through routine internal review by the permittee).

Prompt deviation reports do not need to be resubmitted with regular semiannual (or other routine) reports, but may be referenced by the date of submittal.

F. Emergency Provisions

ARM 17.8, Subchapter 12, Operating Permit Program §1201(13) and §1214(5), (6)&(8)

1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation and causes the source to exceed a technology-based emission limitation under this permit due to the unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of reasonable preventive maintenance, careless or improper operation, or operator error.

2. An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the permittee demonstrates through properly signed, contemporaneous logs, or other relevant evidence, that:

   a. An emergency occurred and the permittee can identify the cause(s) of the emergency;

   b. The permitted facility was at the time being properly operated;

   c. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

   d. The permittee submitted notice of the emergency to the Department within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirements of ARM 17.8.1212(3)(b). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

3. These emergency provisions are in addition to any emergency, malfunction or upset provision contained in any applicable requirement.

G. Inspection and Entry

ARM 17.8, Subchapter 12, Operating Permit Program §1213(3)&(4)

1. Upon presentation of credentials and other requirements as may be required by law, the permittee shall allow the Department, the administrator, or an authorized representative (including an authorized contractor acting as a representative of the Department or the administrator) to perform the following:

   a. Enter the premises where a source required to obtain a permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

c. Inspect at reasonable times any facilities, emission units, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
d. As authorized by the Montana Clean Air Act and rules promulgated thereunder, sample or monitor, at reasonable times, any substances or parameters at any location for the purpose of assuring compliance with the permit or applicable requirements.

2. The permittee shall inform the inspector of all workplace safety rules or requirements at the time of inspection. This section shall not limit in any manner the Department's statutory right of entry and inspection as provided for in 75-2-403, MCA.

H. Fee Payment

ARM 17.8, Subchapter 12, Operating Permit Program §1210(2)(f) and ARM 17.8, Subchapter 5, Air Quality Permit Application, Operation, and Open Burning Fees §505(3)-(5) (STATE ONLY)

1. The permittee must pay application and operating fees, pursuant to ARM Title 17, Chapter 8, Subchapter 5.

2. Annually, the Department shall provide the permittee with written notice of the amount of the fee and the basis for the fee assessment. The air quality operation fee is due 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee, which may be due after the completion of an appeal, is due immediately upon issuance of the Board's decision or upon completion of any judicial review of the Board's decision.

3. If the permittee fails to pay the required fee (or any required portion of an appealed fee) within 90 days after the due date of the fee, the Department may impose an additional assessment of 15% of the fee (or any required portion of an appealed fee) or $100, whichever is greater, plus interest on the fee (or any required portion of an appealed fee), computed at the interest rate established under 15-31-510(3), MCA.

I. Minor Permit Modifications

ARM 17.8, Subchapter 12, Operating Permit Program §1226(3)&(11)

1. An application for a minor permit modification need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

2. The permit shield under ARM 17.8.1214 will not extend to any minor modifications processed pursuant to ARM 17.8.1226.

J. Changes Not Requiring Permit Revision

ARM 17.8, Subchapter 12, Operating Permit Program §1224(1)-(3), (5)&(6)

1. The permittee is authorized to make changes within the facility as described below, provided the following conditions are met:

    a. The proposed changes do not require the permittee to obtain a Montana Air Quality Permit under ARM Title 17, Chapter 8, Subchapter 7;

    b. The proposed changes are not modifications under Title I of the FCAA, or as defined in ARM Title 17, Chapter 8, Subchapters 8, 9, or 10;

    c. The emissions resulting from the proposed changes do not exceed the emissions allowable under this permit, whether expressed as a rate of emissions or in total emissions;

    d. The proposed changes do not alter permit terms that are necessary to enforce applicable emission limitations on emission units covered by the permit; and

    e. The facility provides the administrator and the Department with written notification at least 7 days prior to making the proposed changes.

2. The permittee and the Department shall attach each notice provided pursuant to 1.e above to their respective copies of this permit.

3. Pursuant to the conditions above, the permittee is authorized to make 42 USC Sec. 7661a(b)(10) changes, as defined in ARM 17.8.1201(30), without a permit revision. For each such change, the written notification required under 1.e above shall include a description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

4. The permittee may make a change not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided the following conditions are met:

    a. Each proposed change does not weaken the enforceability of any existing permit conditions;

    b. The Department has not objected to such change;

    c. Each proposed change meets all applicable requirements and does not violate any existing permit term or condition; and

    d. The permittee provides contemporaneous written notice to the Department and the administrator of each change that is above the level for insignificant emission units as defined in ARM 17.8.1201(22) and 17.8.1206(3), and the written notice describes each such change, including the date of the change, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

5. The permit shield authorized by ARM 17.8.1214 shall not apply to changes made pursuant to ARM 17.8.1224(3) and (5), but is applicable to terms and conditions that allow for increases and decreases in emissions pursuant to ARM 17.8.1224(4).

K. Significant Permit Modifications

ARM 17.8, Subchapter 12, Operating Permit Program §1227(1), (3)&(4)

1. The modification procedures set forth in 2 below must be used for any application requesting a significant modification of this permit. Significant modifications include the following:

   a. Any permit modification that does not qualify as either a minor modification or as an administrative permit amendment;

   b. Every significant change in existing permit monitoring terms or conditions;

   c. Every relaxation of permit reporting or recordkeeping terms or conditions that limit the Department's ability to determine compliance with any applicable rule, consistent with the requirements of the rule; or

   d. Any other change determined by the Department to be significant.

2. Significant modifications shall meet all requirements of ARM Title 17, Chapter 8, including those for applications, public participation, and review by affected states and the administrator, as they apply to permit issuance and renewal, except that an application for a significant permit modification need only address in detail those portions of the permit application that require revision, updating, supplementation or deletion.

3. The permit shield provided for in ARM 17.8.1214 shall extend to significant modifications.

L. Reopening for Cause

ARM 17.8, Subchapter 12, Operating Permit Program §1228(1)&(2)

This permit may be reopened and revised under the following circumstances:

1. Additional applicable requirements under the FCAA become applicable to the facility when the permit has a remaining term of 3 or more years. Reopening and revision of the permit shall be completed not later than 18 months after promulgation of the applicable requirement. No reopening is required under ARM 17.8.1228(1)(a) if the effective date of the applicable requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended pursuant to ARM 17.8.1220(12) or 17.8.1221(2);

2. Additional requirements (including excess emission requirements) become applicable to an affected source under the Acid Rain Program. Upon approval by the administrator, excess emission offset plans shall be deemed incorporated into the permit;

3. The Department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emission standards or other terms or conditions of the permit; and

4. The administrator or the Department determines that the permit must be revised or revoked and reissued to ensure compliance with the applicable requirements.

M. Permit Expiration and Renewal

ARM 17.8, Subchapter 12, Operating Permit Program §1210(2)(g), §1220(11)&(12), and §1205(2)(c)

1. This permit is issued for a fixed term of 5 years.

2. Renewal of this permit is subject to the same procedural requirements that apply to permit issuance, including those for application, content, public participation, and affected state and administrator review.

3. Expiration of this permit terminates the permittee's right to operate unless a timely and administratively complete renewal application has been submitted to the Department consistent with ARM 17.8.1221 and 17.8.1205(2)(d). If a timely and administratively complete application has been submitted, all terms and conditions of the permit, including the application shield, remain in effect after the permit expires until the permit renewal has been issued or denied.

4. For renewal, the permittee shall submit a complete air quality operating permit application to the Department not later than 6 months prior to the expiration of this permit, unless otherwise specified. If necessary to ensure that the terms of the existing permit will not lapse before renewal, the Department may specify, in writing to the permittee, a longer time period for submission of the renewal application. Such written notification must be provided at least 1 year before the renewal application due date established in the existing permit.

N. Severability Clause

ARM 17.8, Subchapter 12, Operating Permit Program §1210(2)(i)&(l)

1. The administrative appeal or subsequent judicial review of the issuance by the Department of an initial permit under this subchapter shall not impair in any manner the underlying applicability of all applicable requirements, and such requirements continue to apply as if a final permit decision had not been reached by the Department.

2. If any provision of a permit is found to be invalid, all valid parts that are severable from the invalid part remain in effect. If a provision of a permit is invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications.

O. Transfer or Assignment of Ownership

ARM 17.8, Subchapter 12, Operating Permit Program §1225(2)&(4)

1. If an administrative permit amendment involves a change in ownership or operational control, the applicant must include in its request to the Department a written agreement containing a specific date for the transfer of permit responsibility, coverage and liability between the current and new permittee.

2. The permit shield provided for in ARM17.8.1214 shall not extend to administrative permit amendments.

P. Emissions Trading, Marketable Permits, Economic Incentives
ARM 17.8, Subchapter 12, Operating Permit Program §1226(2)

Notwithstanding ARM 17.8.1226(1) and (7), minor air quality operating permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Montana State Implementation Plan (SIP) or in applicable requirements promulgated by the administrator.

Q. No Property Rights Conveyed
ARM 17.8, Subchapter 12, Operating Permit Program §1210(2)(d)

This permit does not convey any property rights of any sort, or any exclusive privilege.

R. Testing Requirements
ARM 17.8, Subchapter 1, General Provisions §105

The permittee shall comply with ARM 17.8.105.

S. Source Testing Protocol
ARM 17.8, Subchapter 1, General Provisions §106

The permittee shall comply with ARM 17.8.106.

T. Malfunctions
ARM 17.8, Subchapter 1, General Provisions §110

The permittee shall comply with ARM 17.8.110.

U. Circumvention
ARM 17.8, Subchapter 1, General Provisions §111

The permittee shall comply with ARM 17.8.111.

V. Motor Vehicles
ARM 17.8, Subchapter 3, Emission Standards §325

The permittee shall comply with ARM 17.8.325.

W. Annual Emissions Inventory
ARM 17.8, Subchapter 5, Air Quality Permit Application, Operation and Open Burning Fees §505 (STATE ONLY)

The permittee shall supply the Department with annual production and other information for all emission units necessary to calculate actual or estimated actual amount of air pollutants emitted during each calendar year. Information shall be gathered on a calendar-year basis and submitted to the Department by the date required in the emission inventory request, unless otherwise specified in this permit. Information shall be in the units required by the Department.

X. Open Burning

ARM 17.8, Subchapter 6, Open Burning §604, 605 and 606

The permittee shall comply with ARM 17.8.604, 605 and 606.

Y. Montana Air Quality Permits

ARM 17.8, Subchapter 7, Permit, Construction and Operation of Air Contaminant Sources §745, and 764

1. Except as specified, no person shall construct, install, modify or use any air contaminant source or stack associated with any source without first obtaining a permit from the Department or Board. A permit is not required for the sources or stacks listed in ARM 17.8.745(1)(a)-(k).

2. The permittee shall comply with ARM 17.8.743, 744, 745, 748, and 764.

3. ARM 17.8.745(1) defines de minimis changes as construction or changed conditions of operation at a facility holding a Montana Air Quality Permit (MAQP) issued under Chapter 8 that does not increase the facility's potential to emit by more than 5 tons per year (TPY) of any pollutant, except:

   a. Any construction or changed condition that would violate any condition in the facility's existing MAQP or any applicable rule contained in Chapter 8 is prohibited, except as provided in ARM 17.8.745(2);

   b. Any construction or changed conditions of operation that would qualify as a major modification under ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 of Chapter 8;

   c. Any construction or changed condition of operation that would affect the plume rise or dispersion characteristic of emissions that would cause or contribute to a violation of an ambient air quality standard or ambient air increment as defined in ARM 17.8.804;

   d. Any construction or improvement project with a Potential to Emit (PTE) more than 5 TPY may not be artificially split into smaller projects to avoid Montana Air Quality Permitting; and

   e. Emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

4. Any facility making a de minimis change pursuant to ARM 17.8.745(1) shall notify the Department if the change would include a change in control equipment, stack height, stack diameter, stack gas temperature, source location or fuel specifications, or would result in an increase in source capacity above its permitted operation or the addition of a new emission unit. The notice must be submitted, in writing, 10 days prior to start up or use of the proposed de minimis change, or as soon as reasonably practicable in the event of an

unanticipated circumstance causing the de minimis change, and must include the information requested in ARM 17.8.745(1).

Z. National Emission Standard for Asbestos
40 CFR, Part 61, Subpart M

The permittee shall not conduct any asbestos abatement activities except in accordance with 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos).

AA. Asbestos
ARM 17.74, Subchapter 3, General Provisions, and Subchapter 4, Fees

The permittee shall comply with ARM Title 17, chapter 74, subchapter 301. and ARM Title 17, Chapter 74, subchapter 4. (State-only)

BB. Stratospheric Ozone Protection – Servicing of Motor Vehicle Air Conditioners
40 CFR, Part 82, Subpart B

If the permittee performs a service on motor vehicles and this service involves ozone-depleting substance/refrigerant in the motor vehicle air conditioner (MVAC), the permittee is subject to all the applicable requirements as specified in 40 CFR Part 82, Subpart B.

CC. Stratospheric Ozone Protection – Recycling and Emission Reductions
40 CFR, Part 82, Subpart F

The permittee shall comply with the standards for recycling and emission reductions in 40 CFR Part 82, Subpart F, except as provided for MVACs in Subpart B of that part.

1. Persons opening appliances for maintenance, service, repair, or disposal must comply with the required practices pursuant to 40 CFR 82.156.

2. Equipment used during the maintenance, service, repair or disposal of appliances must comply with the standards for recycling and recovery equipment pursuant to 40 CFR 82.158.

3. Persons performing maintenance, service, repair, or disposal of appliances must be certified by an approved technical certification program pursuant to 40 CFR 82.161.

4. Persons disposing of small appliances, MVACs and MVAC-like (as defined at §82.152) appliances must comply with recordkeeping requirements pursuant to 40 CFR 82.166.

5. Persons owning commercial or industrial process refrigeration equipment must comply with the leak repair requirements pursuant to 40 CFR 82.156.

6. Owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep records of refrigerant purchased and added to such appliances pursuant to 40 CFR 82.166.

DD. Emergency Episode Plan

The permittee shall comply with the requirements contained in Chapter 9.7 of the State of Montana Air Quality Control Implementation Plan.

Each major source emitting 100 TPY located in a Priority I Air Quality Control Region, shall submit to the Department a legally enforceable Emergency Episode Action Plan (EEAP) that details how the source will curtail emissions during an air pollutant emergency episode. The industrial EEAP shall be in accordance with the Department's EEAP and shall be submitted according to a timetable developed by the Department, following Priority I reclassification.

EE. Definitions

Terms not otherwise defined in this permit or in the Definitions and Abbreviations Appendix B of this permit, shall have the meaning assigned to them in the referenced regulations.

APPENDICES

Appendix A INSIGNIFICANT EMISSION UNITS

Disclaimer: The information in this appendix is not State or Federally enforceable, but is presented to assist Talen, the permitting authority, inspectors, and the public.

Pursuant to ARM 17.8.1201(22)(a), an insignificant emission unit means any activity or emissions unit located within a source that: (i) has a PTE less than 5 TPY of any regulated pollutant; (ii) has a PTE less than 500 pounds per year of lead; (iii) has a PTE less than 500 pounds per year of Hazardous Air Pollutants (HAP) listed pursuant to 42 U.S.C. Sec. 7412 (b) of the FCAA; and (iv) is not regulated by an applicable requirement, other than a generally applicable requirement that applies to all emission units subject to ARM Title 17, Chapter 8, subchapter 12.

List of Insignificant Activities:

The following table of insignificant sources and/or activities were provided by Talen.

Emissions Unit ID	Description
IEU01	Hydrazine Bulk Storage Tank Vent
IEU02	LPG Vaporizer
IEU03	Unit #1 Cooling Tower
IEU04	Unit #2 Cooling tower
IEU05	Unit #3 Cooling Tower
IEU06	Unit #4 Cooling Tower
IEU07	Waste Site
IEU08	Boiler Chemical Cleaning Process
IEU09	LPG System Safety Valves and Vents
IEU10	Process Tank Vents
IEU11	Process Ponds
IEU12	Boiler Chemical Cleaning Process
IEU13	Diesel Tanks
IEU14	Scrubber Relining Process

Appendix B DEFINITIONS and ABBREVIATIONS

"Act" means the federal Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671.

"Administrative permit amendment" means an air quality operating permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address or phone number of any person identified in the air quality operating permit, or identifies a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by Talen;

(d) Requires changes in monitoring or reporting requirements that the Department deems to be no less stringent than current monitoring or reporting requirements;

(e) Allows for a change in ownership or operational control of a source if the Department has determined that no other change in the air quality operating permit is necessary, consistent with ARM 17.8.1225; or

(f) Incorporates any other type of change that the Department has determined to be similar to those revisions set forth in (a)-(e), above.

"Applicable requirement" means all of the following as they apply to emission units in a source requiring an air quality operating permit (including requirements that have been promulgated or approved by the Department or the administrator through rule making at the time of issuance of the air quality operating permit, but have future-effective compliance dates, provided that such requirements apply to sources covered under the operating permit):

(a) Any standard, rule, or other requirement, including any requirement contained in a consent decree or judicial or administrative order entered into or issued by the Department, that is contained in the Montana state implementation plan approved or promulgated by the administrator through rule making under Title I of the FCAA;

(b) Any federally enforceable term, condition or other requirement of any Montana Air Quality Permit issued by the Department under ARM Title 17, Chapter 8, subchapters 7, 8, 9 and 10, or pursuant to regulations approved or promulgated through rule making under Title I of the FCAA, including Parts C and D;

(c) Any standard or other requirement under 42 U.S.C. Sec. 7411 of the FCAA, including Sec. 7411(d);

(d) Any standard or other requirement under 42 U.S.C. Sec. 7412 of the FCAA, including any requirement concerning accident prevention under 42 U.S.C. Sec. 7412(r)(7), but excluding the contents of any risk management plan required under 42 U.S.C. Sec. 7412(r);

(e) Any standard or other requirement of the acid rain program under Title IV of the FCAA or regulations promulgated thereunder;

(f) Any requirements established pursuant to 42 U.S.C. Sec. 7661c(b) or 42 U.S.C. Sec. 7414(a)(3) of the FCAA;

(g) Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Sec. 7429 of the FCAA;

(h) Any standard or other requirement for consumer and commercial products, under 42 U.S.C. Sec. 7511b(e) of the FCAA;

(i) Any standard or other requirement for tank vessels, under 42 U.S.C. Sec. 7511b(f) of the FCAA;

(j) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator determines that such requirements need not be contained in an air quality operating permit;

(k) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to 42 U.S.C. Sec. 7661c(e) of the FCAA; or

(l) Any federally enforceable term or condition of any air quality open burning permit issued by the Department under ARM Title 17, Chapter 8, subchapter 6.

"Department" means the Montana Department of Environmental Quality.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under 42 U.S.C. Sec. 7412(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

"FCAA" means the Federal Clean Air Act, as amended.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General air quality operating permit" or **"general permit"** means an air quality operating permit that meets the requirements of ARM 17.8.1222, covers multiple sources in a source category, and is issued in lieu of individual permits being issued to each source.

"Hazardous air pollutant" means any air pollutant listed as a hazardous air pollutant pursuant to 42 U.S.C. Sec. 7412(b) of the FCAA.

"Non-federally enforceable requirement" means the following as they apply to emission units in a source requiring an air quality operating permit:

(a) Any standard, rule, or other requirement, including any requirement contained in a consent decree, or judicial or administrative order entered into or issued by the Department, that is not contained in the Montana State Implementation Plan approved or promulgated by the administrator through rule making under Title I of the FCAA;

(b) Any term, condition or other requirement contained in any Montana Air Quality Permit issued by the Department under ARM Title 17, Chapter 8, subchapters 7, 8, 9 or 10 that is not federally enforceable;

(c) Does not include any Montana ambient air quality standard contained in ARM Title 17, chapter 8, subchapter 2.

"Operating Day" means any calendar day (midnight to midnight) in which any fuel is combusted in the unit.

"Permittee" means the owner or operator of any source subject to the permitting requirements of this subchapter, as provided in ARM 17.8.1204, that holds a valid air quality operating permit or has submitted a timely and complete permit application for issuance, renewal, amendment, or modification pursuant to this subchapter.

"Regulated air pollutant" means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under 42 U.S.C. Sec. 7411 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard or other requirement established or promulgated under 42 U.S.C. Sec. 7412 of the FCAA, including but not limited to the following:

(i) Any pollutant subject to requirements under 42 U.S.C. Sec. 7412(j) of the FCAA. If the administrator fails to promulgate a standard by the date established in 42 U.S.C. Sec. 7412(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established in 42 U.S.C. Sec. 7412(e) of the FCAA;

(ii) Any pollutant for which the requirements of 42 U.S.C. Sec. 7412(g)(2) of the FCAA have been met but only with respect to the individual source subject to a 42 U.S.C. Sec. 7412(g)(2) requirement.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Department.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(c) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the environmental protection agency).

(d) For affected sources: the designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder are concerned, and the designated representative for any other purposes under this subchapter.

Abbreviations:

ARM	Administrative Rules of Montana
ASTM	American Society of Testing Materials
BACT	Best Available Control Technology
BDT	bone dry tons
Btu	British thermal unit
CFR	Code of Federal Regulations
CO	carbon monoxide
DEQ	Department of Environmental Quality
dscf	dry standard cubic foot
dscfm	dry standard cubic foot per minute
EEAP	Emergency Episode Action Plan
EPA	U.S. Environmental Protection Agency
EPA Method	Test methods contained in 40 CFR Part 60, Appendix A
EU	emissions unit
FCAA	Federal Clean Air Act
gr	grains
HAP	hazardous air pollutant
Hg	mercury
IEU	insignificant emissions unit
MAQP	Montana Air Quality Permit
Mbdft	thousand board feet
MEMS	Mercury Emission Monitoring System
Method 5	40 CFR Part 60, Appendix A, Method 5
Method 9	40 CFR Part 60, Appendix A, Method 9
MMbdft	million board feet
MMBtu	million British thermal units
NOx	oxides of nitrogen
NO_2	nitrogen dioxide
O_2	oxygen
Pb	lead
PM	particulate matter
PM10	particulate matter less than 10 microns in size
psi	pounds per square inch
scf	standard cubic feet
SIC	Source Industrial Classification
SO_2	sulfur dioxide
SOx	oxides of sulfur
TPY	tons per year
TBtu	trillion British Thermal Units
U.S.C.	United States Code
VE	visible emissions
VOC	volatile organic compound

Appendix C NOTIFICATION ADDRESSES

Compliance Notifications:

Montana Department of Environmental Quality
Air, Energy & Mining Division
Air Quality Bureau
P.O. Box 200901
Helena, MT 59620-0901

United States EPA
Air Program Coordinator
Region VIII, Montana Office
10 W. 15th, Suite 3200
Helena, MT 59626

Permit Modifications:

Montana Department of Environmental Quality
Air, Energy & Mining Division
Air Quality Bureau
P.O. Box 200901
Helena, MT 59620-0901

Office of Partnerships and Regulatory Assistance
Air and Radiation Program
US EPA Region VIII 8P-AR
1595 Wynkoop Street
Denver, CO 80202 -1129

Appendix D AIR QUALITY INSPECTOR INFORMATION

Disclaimer: The information in this appendix is not State or Federally enforceable, but is presented to assist Talen, permitting authority, inspectors, and the public.

1. **Direction to Plant:** The facility is located in Colstrip, Montana and is accessed by traveling south on Highway 39 from I-90 and turning east into the City of Colstrip on Willow Avenue.

2. **Safety Equipment Required:** The following safety guidelines were submitted by Talen:

General Safety Guidelines for Talen Units 1, 2, 3, & 4

The following are excerpts from the Talen Employee Safety Handbook. These rules apply to all visitors as well. In all instances, visitors will be escorted by a Company employee.

Safety Glasses and Hard Hats: Approved eye protection and company issued hard hats are required while on Talen Project Division property, except in the following areas;

- Control Rooms
- Rest Rooms
- Lunch Rooms
- Offices
- To and from the parking lots and buildings
- Other areas as posted

Proper Clothing: Clothing and shoes, which are suitable for the particular type of work and existing weather conditions, shall be worn. The following should be kept in mind:

- Thin cotton, rayon, or other synthetic materials are highly flammable and will readily ignite.

- Long-sleeved shirts with sleeves rolled down and buttoned provide primary protection from many types of injuries, particularly from burns, electrical contact, irritants, splinters, and scratches.

- Cuffed trousers and short-topped shoes catch and hold hot or corrosive materials, endangering the wearer.

- Special protective clothing and equipment is furnished when required.

- Loose clothing and gloves must not be worn when working around moving machinery. Long sleeves must be rolled down and buttoned tight.

- For all functions involving the use of chemicals outside of the Chem Lab and EED lab, the use of goggles, face shields, chemical/resistant gloves, and chemical suits are required.

- It is mandatory that an acid suit shall be worn during all functions involving acids or caustics.

- Rubber gloves, Tyvek (white suits), or similar suits, rubber boots and vision protection shall be worn during all operations involving lime.

Protective Footwear: Shoes of good quality construction, with leather or equivalent material to provide protection from abrasion and punctures, are required.

Signs: Special instruction signs are for the safety of employees, visitors, and equipment. These instructions shall be observed at all times:

- Caution Signs (Black and Yellow) – Indicate a possible hazard against which proper precaution should be taken. Caution signs warn against potential hazards or caution against an unsafe practice.

- Danger Signs (Red, Black, and White) – Indicate immediate danger, and special precautions are necessary.

- Safety Instruction Signs (Green and White) – Provide general instructions and for suggestive information.

- Radiation Warning Signs (Reddish Purple and Yellow) – Warn of a radiation hazard only. Special precautions and equipment are necessary.

- Direction Signs (Black and White) – Ensure the safe and efficient flow of vehicles and pedestrian traffic.

- Vision, Hearing and Respiratory Protection Signs, where posted, shall be observed.

Horseplay – Scuffling or practical jokes are dangerous and are strictly forbidden.

Smoking Policy – Smoking or open flames shall not be permitted in areas where explosive atmospheres might be present, including but not limited to, oil storage rooms, hydrogen areas, coal handling systems, LPG handling and storage facility, and any other area posted as a "NO SMOKING" area. Absence of "NO SMOKING" signs shall not excuse smoking in dangerous places.

Seat Belts – Where seat belts are provided in vehicles and equipment, they shall be used at all times while the vehicle or equipment is being operated.

Drugs and Alcohol – The use of intoxicating beverages on Company premises is strictly forbidden. The use of any drug on Company property, except those prescribed by a competent medical authority, is strictly forbidden by Company Policy.

3. **Facility Plot Plan:** The facility plot plans were submitted as part of the applications for Operating Permit #OP0513-00 and Operating Permit #OP1187-00.

Appendix E Opacity CEMS

Nothing in this appendix is intended to alter the requirements in the Acid Rain Appendix.

1. Pursuant to 40 CFR Part 75, Talen shall calibrate, maintain, and operate continuous monitoring systems.

   Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required pursuant to 40 CFR 60.13(d), 40 CFR Part 75 and the accuracy audits required below, all continuous monitoring systems shall be in continuous operation.

   Talen shall conduct annual accuracy audits using a calibration jig and NBS-traceable neutral density filters on the continuous monitoring system.

2. Talen shall maintain records for a minimum of 5 years of the log sheets, computerized data, analysis, and calculations used to prepare the required reports.

3. Compliance with this appendix shall be deemed compliance with the requirements contained in the EPA PSD permit Appendix III issued September 11, 1979.

4. Compliance with this appendix shall be deemed compliance with the requirements contained in MAQP #0513-09, Section II.C.1.e., Section II.C.2., Section II.E.1., and Section II.E.2.

5. Talen shall submit reports to the Department containing the information required by 40 CFR 60.7 and as required below. The Department is requiring all opacity CEMS reports to be submitted quarterly.

   a. Talen shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which the continuous monitoring system is inoperative.

   b. Talen shall submit an excess emissions and monitoring systems performance report and/or a summary report form (see paragraph (c) below) to the Department. Written reports of reportable excess emissions greater than 20% opacity shall include the following information:

      i. The magnitude of excess emissions, any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions; and the process operating time during the reporting period.

      ii. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility; and the nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

      iii. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

iv. When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

c. The summary report form shall contain the information and be in the format shown in Figure 1. The summary report form shall be submitted:

i. If the total duration of excess emissions for the reporting period is less than 1% of the total operating time for the reporting period and CEMS downtime for the reporting period is less than 5% of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in Section (b) above need not be submitted unless requested.

ii. If the total duration of excess emissions for the reporting period is 1% or greater of the total operating time for the reporting period or the total CEMS downtime for the reporting period is 5% or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in Section (b) above shall both be submitted.

Figure 1--Summary Report-- Excess Emission and Monitoring System Performance

Pollutant:
Reporting period dates: From _____ to _____
Emission Limitation:
Monitor Manufacturer and Model No.:
Date of Latest CEMS Certification or Audit:
Process Unit(s) Description:
Total source operating time in reporting period:

Emission Data Summary

1. Duration of excess emission in reporting period due to:
   a. Startup/shutdown.
   b. Control equipment problems.
   c. Process problems.
   d. Other known causes.
   e. Unknown causes.

2. Total duration of excess emissions.

3. Total duration of excess emissions x (100) = % excess emissions
   Total Boiler Operating Time

CEMS Performance Summary

1. CEMS downtime in reporting period due to:
   a. Monitor equipment malfunctions.
   b. Non-Monitor equipment malfunctions.
   c. Quality assurance calibrations.
   d. Other known causes.
   e. Unknown causes.

2. Total CEMS Downtime when the boiler is operating (nearest quarter hour).

3. $\frac{\text{Total CEMS downtime when the boiler is operating x 100}}{\text{Total boiler operating time}}$ = % downtime

4. Total boiler operating time (nearest quarter hour).

The quarterly reports must be postmarked by the 30th day after the end of each quarter.

Appendix F SO_2 CEMS

Nothing in this appendix is intended to alter the requirements in the Acid Rain Appendix.

1. Pursuant to 40 CFR Part 75, Talen shall calibrate, maintain, and operate continuous monitoring systems.

   The monitoring systems shall be capable of determining emissions in the units of the applicable standards.

   Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required pursuant to 40 CFR Part 75, all continuous monitoring systems shall be in continuous operation.

2. Compliance with 40 CFR Part 75 shall be deemed compliance with the requirements contained in 40 CFR 60.13(a) through (c), (e) through (g), and (i) through (j) and with 40 CFR 60.45(c).

3. Compliance with 40 CFR Part 75 and this appendix shall be deemed compliance with the requirements contained in the EPA PSD permit Appendix III issued September 11, 1979.

4. Compliance with 40 CFR Part 75 and this appendix shall be deemed compliance with the requirements contained in MAQP #0513-09, Section II.C.1.e., Section II.C.2., Section II.E.1., and Section II.E.2.

5. Talen shall maintain, for a minimum of 5 years, records of the log sheets, computerized data, analysis, and calculations used to prepare the required reports.

6. Talen shall submit reports to the Department containing the information required by 40 CFR 60.7 and as required below. The Department is requiring all SO_2 CEMS reports to be submitted quarterly.

   a. Talen shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which the continuous monitoring system is inoperative.

   b. Talen shall submit an excess emissions and monitoring systems performance report and/or a summary report form (see Paragraph (c) below) to the Department. Written reports of excess emissions shall be reported in the units of the standard exceeded and shall include the following information:

      i. The magnitude of excess emissions, any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions; and the process operating time during the reporting period.

      ii. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility; and the nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

iii. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

iv. When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

c. The summary report form shall contain the information and be in the format shown in Figure 1. The summary report form shall be submitted:

i. If the total duration of excess emissions for the reporting period is less than 1% of the total operating time for the reporting period and CEMS downtime for the reporting period is less than 5% of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in Section (b) above need not be submitted unless requested.

ii. If the total duration of excess emissions for the reporting period is 1% or greater of the total operating time for the reporting period or the total CEMS downtime for the reporting period is 5% or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in Section (b) above shall both be submitted.

Figure 1--Summary Report--Gaseous Excess Emission and Monitoring System Performance

Pollutant:
Reporting period dates: From _____ to _____
Emission Limitation:
Monitor Manufacturer and Model No.:
Date of Latest CEMS Certification or Audit:
Process Unit(s) Description:
Total source operating time in reporting period:

Emission Data Summary

1. Duration of excess emission in reporting period due to:
   a. Startup/shutdown.
   b. Control equipment problems.
   c. Process problems.
   d. Other known causes.
   e. Unknown causes.

2. Total duration of excess emissions.

3. Total duration of excess emissions x (100) = % excess emissions
   Total Boiler Operating Time

CEMS Performance Summary

1. CEMS downtime in reporting period due to:
   a. Monitor equipment malfunctions.
   b. Non-Monitor equipment malfunctions.
   c. Quality assurance calibrations.
   d. Other known causes.
   e. Unknown causes.

2. Total CEMS Downtime when the boiler is operating (nearest quarter hour).

3. $\frac{\text{Total CEMS downtime when the boiler is operating x 100}}{\text{Total boiler operating time}}$ = % downtime

4. Total boiler operating time (nearest quarter hour).

The quarterly reports must be postmarked by the 30th day after the end of each quarter.

7. Talen shall submit quarterly reports to the Department containing the following information for each month of the quarter:

   a. Tons of emissions calculated as the sum of $E_h=K \times C_h \times Q_h$ where E_h = emission rate (lb/hr), $K = 1.66 \times 10^{-7}$ (lb/scf)/ppm (SO_2), C_h = Measured Pollutant Concentration (ppm_{wet}), and Q_h = Measured Stack Gas Flow Rate ($SCFH_{wet}$); and

   b. A summary report including the information identified in 40 CFR 75.64 (a)(2) in writing that includes:

      Tons (rounded to the nearest tenth) of SO_2 emitted during the quarter and cumulative SO_2 emissions for calendar year.

   The quarterly reports must be postmarked by the 30th day after the end of the calendar quarter.

8. Talen shall submit copies of all RATAs performed to the Department in accordance with ARM 17.8.106, Source Testing Protocol.

9. Talen shall submit copies of each monitoring plan revision that results in the need to recertify the CEMS.

Appendix G NOx CEMS

Nothing in this appendix is intended to alter the requirements in the Acid Rain Appendix.

1. Pursuant to 40 CFR Part 75, Talen shall calibrate, maintain, and operate continuous monitoring systems.

   The monitoring systems shall be capable of determining emissions in the units of the applicable standards.

   Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required pursuant to 40 CFR Part 75, all continuous monitoring systems shall be in continuous operation.

2. Compliance with 40 CFR Part 75 shall be deemed compliance with the requirements contained in 40 CFR 60.13(a) through (c), (e) through (g), and (i) through (j) and 40 CFR 60.45(c).

3. Compliance with 40 CFR Part 75 and this appendix shall be deemed compliance with the requirements contained in the EPA PSD permit Appendix III issued September 11, 1979.

4. Compliance with 40 CFR Part 75 and this appendix shall be deemed compliance with the requirements contained in MAQP #0513-09, Section II.C.1.e., Section II.C.2., Section II.E.1., and Section II.E.2.

5. Talen shall conduct a "Standard Practice for Ultimate Analysis of Coal and Coke", ASTM D3176-89 (Reapproved 2002), at a minimum of once per year for each fuel used.

6. Talen shall determine the gross calorific value (GCV) of the fuels using ASTM D2015-91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter" or other method as identified in 40 CFR Part 75, Appendix F, 3.3.6.2, at a minimum of once per year for each fuel used.

7. Talen shall conduct a weekly fuel analysis using ASTM D4239-85 or other method approved by the Department.

8. Talen shall maintain records for a minimum of 5 years of the log sheets, computerized data, analysis, and calculations used to prepare the required reports.

9. Talen shall submit reports to the Department containing the information required by 40 CFR 60.7 and as required below. The Department is requiring all NO_x CEMS reports to be submitted quarterly.

   a. Talen shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which the continuous monitoring system is inoperative.

b. Talen shall submit an excess emissions and monitoring systems performance report and/or a summary report form (see paragraph (c) below) to the Department. Written reports of excess emissions shall be reported in the units of the standard exceeded and shall include the following information:

   i. The magnitude of excess emissions, any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions; and the process operating time during the reporting period.

   ii. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility; and the nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

   iii. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

   iv. When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

c. The summary report form shall contain the information and be in the format shown in Figure 1. The summary report form shall be submitted

   i. If the total duration of excess emissions for the reporting period is less than 1% of the total operating time for the reporting period and CEMS downtime for the reporting period is less than 5% of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in Section (b) above need not be submitted unless requested.

   ii. If the total duration of excess emissions for the reporting period is 1% or greater of the total operating time for the reporting period or the total CEMS downtime for the reporting period is 5% or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in Section (b) above shall both be submitted.

Figure 1--Summary Report--Gaseous Excess Emission and Monitoring System Performance

Pollutant:
Reporting period dates: From _____ to _____
Emission Limitation:
Monitor Manufacturer and Model No.:
Date of Latest CEMS Certification or Audit:
Process Unit(s) Description:
Total source operating time in reporting period:

Emission Data Summary

1. Duration of excess emission in reporting period due to:
   a. Startup/shutdown.
   b. Control equipment problems.
   c. Process problems.
   d. Other known causes.
   e. Unknown causes.

2. Total duration of excess emissions.

3. Total duration of excess emissions x (100) = % excess emissions
   Total Boiler Operating Time

CEMS Performance Summary

1. CEMS downtime in reporting period due to:
   a. Monitor equipment malfunctions.
   b. Non-Monitor equipment malfunctions.
   c. Quality assurance calibrations.
   d. Other known causes.
   e. Unknown causes.

2. Total CEMS Downtime when the boiler is operating (nearest quarter hour).

3. Total CEMS downtime when the boiler is operating x 100 = % downtime
   Total boiler operating time

4. Total boiler operating time (nearest quarter hour).

The quarterly reports must be postmarked by the 30th day after the end of each quarter.

10. Talen shall submit quarterly reports to the Department containing the following information for each month of the quarter:

    a. Monthly average coal analysis;

    b. Coal consumption;

    c. Other fuels combusted and the amount;

d. Tons of emissions calculated as the sum of E_h=K x C_h x Q_h where E_h = emission rate (lb/hr), K = 1.19 x 10^{-7} (lb/scf)/ppm (NOx), C_h = Measured Pollutant Concentration (ppm_{wet}), and Q_h = Measured Stack Gas Flow Rate ($SCFH_{wet}$); and

e. A summary report including the information identified in 40 CFR 75.64 (a)(3) through (5) in writing which includes:

   i. Average NOx emission rate (lb/mmBtu, rounded to the nearest hundredth) during the quarter and cumulative NOx emission rate for calendar year.

   ii. Tons of CO_2 emitted during quarter and cumulative CO_2 for calendar year.

   iii. Total heat input (mmBtu) for quarter and cumulative heat input for calendar year.

The quarterly reports must be postmarked by the 30th day after the end of the calendar quarter.

11. Talen shall submit copies of all RATAs performed to the Department in accordance with ARM 17.8.106, Source Testing Protocol.

12. Talen shall submit copies of each monitoring plan revision that results in the need to a recertify the CEMS.

United States
Environmental Protection Agency
Acid Rain Program

OMB No. 2060-0258
Expires 1-31-96

Phase II Permit Application

For more information, see instructions and refer to 40 CFR 72.30 and 72.31

This submission is: [X] New [ ] Revised

STEP 1
Identify the source by plant name, State, and ORIS code from NADB

Plant Name	State	ORIS Code
Colstrip Units #1 and #2	MT	6076

STEP 2
Enter the boiler ID# from NADB for each affected unit, and indicate whether a repowering plan is being submitted for the unit by entering "yes" or "no" at column c. For new units, enter the requested information in columns d and e

a	b	c	d	e
Boiler ID#	Compliance Plan: Unit Will Hold Allowances in Accordance with 40 CFR 72.9(c)(1)	Compliance Plan: Repowering Plan	New Units: Commence Operation Date	New Units: Monitor Certification Deadline
000001	(Yes)	No		
000002	(Yes)	No		
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			

STEP 3
Check the box if the response in column c of Step 2 is "Yes" for any unit

[ ] For each unit that will be repowered, the Repowering Extension Plan form is included and the Repowering Technology Petition form has been submitted or will be submitted by June 1, 1997.

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

Colstrip Units #1 and #2
Plant Name (from Step 1)

STEP 4
Read the standard requirements and certification, enter the name of the designated representative, and sign and date

Standard Requirements

Permit Requirements.

(1) The designated representative of each affected source and each affected unit at the source shall:
(i) Submit a complete Acid Rain permit application (including a compliance plan) under 40 CFR part 72 in accordance with the deadlines specified in 40 CFR 72.30; and
(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit;
(2) The owners and operators of each affected source and each affected unit at the source shall:
(i) Operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the permitting authority; and
(ii) Have an Acid Rain Permit.

Monitoring Requirements.

(1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR parts 74, 75, and 76.
(2) The emissions measurements recorded and reported in accordance with 40 CFR part 75 shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.
(3) The requirements of 40 CFR parts 74 and 75 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

Sulfur Dioxide Requirements.

(1) The owners and operators of each source and each affected unit at the source shall:
(i) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
(ii) Comply with the applicable Acid Rain emissions limitations for sulfur dioxide.
(2) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.
(3) An affected unit shall be subject to the requirements under paragraph (1) of the sulfur dioxide requirements as follows:
(i) Starting January 1, 2000, an affected unit under 40 CFR 72.6(a)(2); or
(ii) Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR part 75, an affected unit under 40 CFR 72.6(a)(3).
(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.
(5) An allowance shall not be deducted in order to comply with the requirements under paragraph (1)(i) of the sulfur dioxide requirements prior to the calendar year for which the allowance was allocated.
(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or the written exemption under 40 CFR 72.7 and 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.
(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

Nitrogen Oxides Requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.

Excess Emissions Requirements.

(1) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan, as required under 40 CFR part 77.
(2) The owners and operators of an affected unit that has excess emissions in any calendar year shall:
(i) Pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR part 77; and
(ii) Comply with the terms of an approved offset plan, as required by 40 CFR part 77.

Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Administrator or permitting authority:
(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative;
(ii) All emissions monitoring information, in accordance with 40 CFR part 75;
(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program; and,

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

Colstrip Units #1 and #2
Plant Name (from Step 1)

Recordkeeping and Reporting Requirements (cont.)

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CFR part 72 subpart I and 40 CFR part 75.

Liability.

(1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or a written exemption under 40 CFR 72.7 or 72.8, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to section 113(c) of the Act.
(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to section 113(c) of the Act and 18 U.S.C. 1001.
(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.
(4) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.
(5) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.
(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under 40 CFR 72.44 (Phase II repowering extension plans) and 40 CFR 76.11 (NO_x averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.
(7) Each violation of a provision of 40 CFR parts 72, 73, 74, 75, 76, 77, and 78 by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

Effect on Other Authorities. No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or a written exemption under 40 CFR 72.7 or 72.8 shall be construed as:

(1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;
(2) Limiting the number of allowances a unit can hold; *provided,* that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;
(3) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law;
(4) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or,
(5) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

Certification

I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

Carlton D. Grimm Name	
Signature	December 20, 1995 Date

STEP 5 (optional)
Enter the source AIRS and FINDS identification numbers, if known

AIRS
FINDS

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

United States
Environmental Protection Agency
Acid Rain Program

OMB No. 2060-0258
Expires 1-31-96

Phase II Permit Application

For more information, see instructions and refer to 40 CFR 72.30 and 72.31

This submission is: [X] New [ ] Revised

STEP 1
Identify the source by plant name, State, and ORIS code from NADB

Plant Name	State	ORIS Code
Colstrip Units #3 and #4	MT	6076

STEP 2
Enter the boiler ID# from NADB for each affected unit, and indicate whether a repowering plan is being submitted for the unit by entering "yes" or "no" at column c. For new units, enter the requested information in columns d and e

a	b	c	d	e
Boiler ID#	Compliance Plan: Unit Will Hold Allowances in Accordance with 40 CFR 72.9(c)(1)	Compliance Plan: Repowering Plan	New Units: Commence Operation Date	New Units: Monitor Certification Deadline
000003	Yes	No		
000004	Yes	No		
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			
	Yes			

STEP 3
Check the box if the response in column c of Step 2 is "Yes" for any unit

[ ] For each unit that will be repowered, the Repowering Extension Plan form is included and the Repowering Technology Petition form has been submitted or will be submitted by June 1, 1997.

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

Colstrip Units #3 and #4
Plant Name (from Step 1)

STEP 4
Read the standard requirements and certification, enter the name of the designated representative, and sign and date

Standard Requirements

Permit Requirements.

(1) The designated representative of each affected source and each affected unit at the source shall:
(i) Submit a complete Acid Rain permit application (including a compliance plan) under 40 CFR part 72 in accordance with the deadlines specified in 40 CFR 72.30; and
(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit;
(2) The owners and operators of each affected source and each affected unit at the source shall:
(i) Operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the permitting authority; and
(ii) Have an Acid Rain Permit.

Monitoring Requirements.

(1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR parts 74, 75, and 76.
(2) The emissions measurements recorded and reported in accordance with 40 CFR part 75 shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.
(3) The requirements of 40 CFR parts 74 and 75 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

Sulfur Dioxide Requirements.

(1) The owners and operators of each source and each affected unit at the source shall:
(i) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
(ii) Comply with the applicable Acid Rain emissions limitations for sulfur dioxide.
(2) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.
(3) An affected unit shall be subject to the requirements under paragraph (1) of the sulfur dioxide requirements as follows:
(i) Starting January 1, 2000, an affected unit under 40 CFR 72.6(a)(2); or
(ii) Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR part 75, an affected unit under 40 CFR 72.6(a)(3).
(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.
(5) An allowance shall not be deducted in order to comply with the requirements under paragraph (1)(i) of the sulfur dioxide requirements prior to the calendar year for which the allowance was allocated.
(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or the written exemption under 40 CFR 72.7 and 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.
(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

Nitrogen Oxides Requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.

Excess Emissions Requirements.

(1) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan, as required under 40 CFR part 77.
(2) The owners and operators of an affected unit that has excess emissions in any calendar year shall:
(i) Pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR part 77; and
(ii) Comply with the terms of an approved offset plan, as required by 40 CFR part 77.

Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Administrator or permitting authority:
(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative;
(ii) All emissions monitoring information, in accordance with 40 CFR part 75;
(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program; and,

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

Colstrip Units #3 and #4
Plant Name (from Step 1)

Recordkeeping and Reporting Requirements (cont.)

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CFR part 72 subpart I and 40 CFR part 75.

Liability.

(1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or a written exemption under 40 CFR 72.7 or 72.8, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to section 113(c) of the Act.
(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to section 113(c) of the Act and 18 U.S.C. 1001.
(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.
(4) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.
(5) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.
(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under 40 CFR 72.44 (Phase II repowering extension plans) and 40 CFR 76.11 (NO_x averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.
(7) Each violation of a provision of 40 CFR parts 72, 73, 74, 75, 76, 77, and 78 by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

Effect on Other Authorities. No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or a written exemption under 40 CFR 72.7 or 72.8 shall be construed as:

(1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;
(2) Limiting the number of allowances a unit can hold; *provided*, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;
(3) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law;
(4) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or,
(5) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

Certification

I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

Carlton D. Grimm	
Name	
Signature	Date: December 4, 1995

STEP 5 (optional)
Enter the source AIRS and FINDS identification numbers, if known

AIRS
FINDS

EPA Form 7610-16 (rev. 12-94; previous versions obsolete)

Colstrip SES Particulate Compliance Assurance Monitoring (CAM) Plan

I. Background

A. Emissions Unit Identification:

PPL Montana, LLC
Colstrip Steam Electric Station (CSES)
Rosebud County
Colstrip, Montana
ORSIPL # 6076

Identification	Description	Primary NAICS Code	EPA FINDS #
CSES Unit 1	Tangential Coal-Fired Boiler	221112	MTD000710236
CSES Unit 2	Tangential Coal-Fired Boiler	221112	MTD000710236
CSES Unit 3	Tangential Coal-Fired Boiler	221112	MTD000710236
CSES Unit 4	Tangential Coal-Fired Boiler	221112	MTD000710236

B. Applicable Regulations, Emission Limits, and Monitoring Requirements

Unit	Regulations	Opacity		Particulate	
		Emission Limit*	Compliance Method	Emission Limit	Compliance Method
1	40 CFR 60 Subparts A & D	20% (6-min. Avg)	COMS	0.10 #/mmBtu	3-run RM5 Test
2	40 CFR 60 Subparts A & D	20% (6-min. Avg)	COMS	0.10 #/mmBtu	3-run RM5 Test
3	40CFR60 Subparts A & D, 40CFR52.21, ARM 17.8.710	20% (6-min. Avg)	COMS	0.05 #/mmBtu & 379 #/Hr	3-run RM5 Test
4	40CFR60 Subparts A & D, 40CFR52.21, ARM 17.8.710	20% (6-min. Avg)	COMS	0.05 #/mmBtu & 379 #/Hr	3-run RM5 Test

* Opacity Excess Emission is defined as any block six-minute period during which the average opacity exceeds 20%, except that one six-minute period per hour of up to 27% opacity is allowed and need not be reported.

Monitoring Requirements:
Continuous Opacity Monitoring Systems (COMS)

C. Control Technology Description

Colstrip Units 1 & 2

The scrubbers at Colstrip Units 1 & 2 are three-vessel venturi and spray absorber systems. A typical vessel is shown in Figure IC-1. During normal full load operations all three scrubber vessels are in service, each one treating about 1/3 of the flue gas.

The flue gas enters the scrubber vessel and is accelerated by the converging surfaces of the plumb bob and venturi bowl. The flue gas and slurry meet in the venturi throat where turbulence atomizes the slurry. Acceleration of the flue gas causes particulate to collide with and be absorbed by slurry droplets.

The majority of fly ash particulate and most of the SO_2 are removed in the venturi section. The throat area of the venturi is adjusted by moving the plumb bob up or down to obtain the desired pressure drop across the plumb bob of each scrubber. The flue gas velocity caused by this pressure drop ensures optimum fly ash removal. The slurry and collected fly ash are separated from the flue gas as it turns up to enter the absorption spray area.

The flue gas enters the absorption spray area in the annular space between the downcomer and the shell of the scrubber vessel. The flue gas flows through a sieve tray where it is contacted with recycle slurry for additional removal of SO_2. Above the sieve tray is a set of absorption sprays to provide additional contact the flue gas.

The flue gas then flows through the mist eliminator where entrained water droplets are removed.

After being treated, the flue gas exits the scrubber vessels. The treated gas is raised in temperature as it passes through a steam reheater and then discharged to the stack through the induced draft fan.

Colstrip Units 3 & 4

There are eight wet venturi scrubber vessels on each unit. Six to seven vessels are used during normal full load operations. A typical Units 3 & 4 scrubber vessel is illustrated in IC-2.

The flue gas enters the scrubber vessel and is accelerated by the converging surfaces of the plumb bob and venturi bowl. The flue gas and slurry meet in the venturi throat where turbulence atomizes the slurry. Acceleration of the flue gas causes particulate to collide with and be absorbed by slurry droplets.

The majority of fly ash particulate and most of the SO_2 are removed in the venturi section. The throat area of the venturi is adjusted by moving the plumb bob up or down to obtain the desired pressure drop across the plumb bob of each scrubber. The flue gas velocity caused by this pressure drop ensures optimum fly ash removal. The slurry and collected fly ash are separated from the flue gas as it turns up to enter the absorption spray area.

The flue gas enters the absorption spray area in the annular space between the downcomer and the shell of the scrubber vessel. The flue gas is contacted with recycle slurry for additional removal of SO_2. Above the absorption section is a wash tray which uses recirculation water to contact the flue gas and remove entrained recycle slurry from the flue gas.

The flue gas then flows through the mist eliminator where entrained water droplets are removed.

After being treated, the flue gas exits the scrubber vessels. The treated gas is raised in temperature as it passes through a steam reheater and then discharged to the stack through the induced draft fan.

Figure IC-1: Typical Colstrip Units 1 & 2 Scrubber Vessel w/ Sieve Tray Retrofit

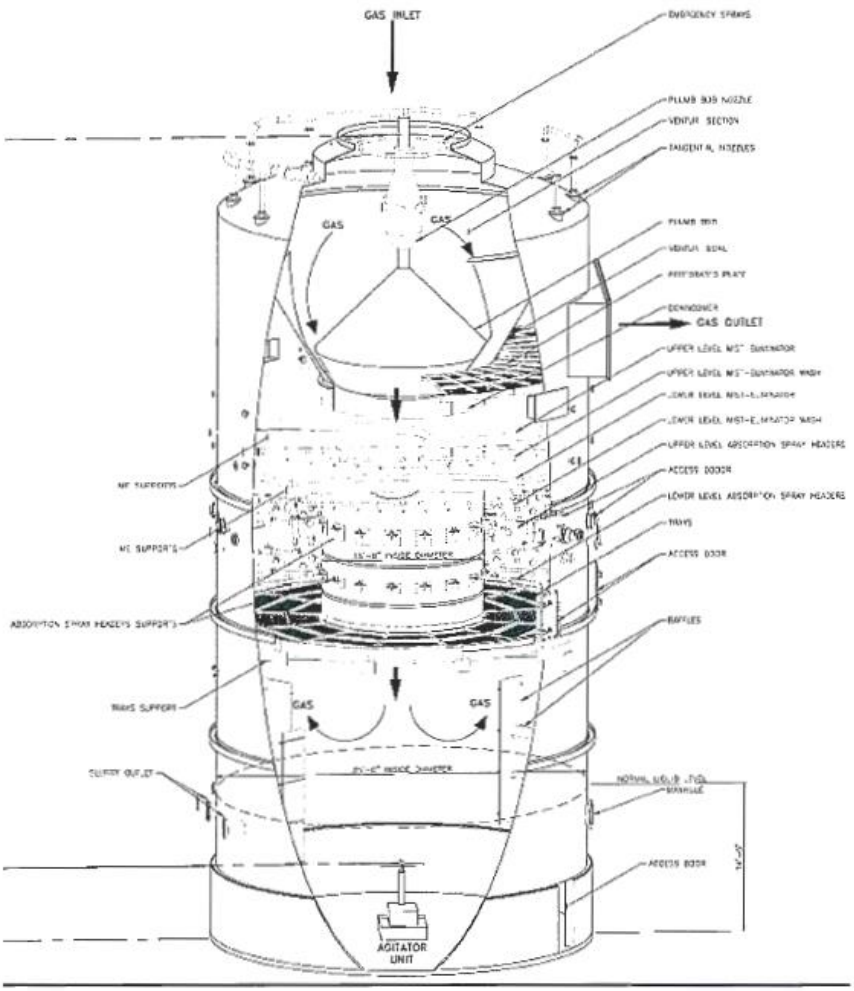
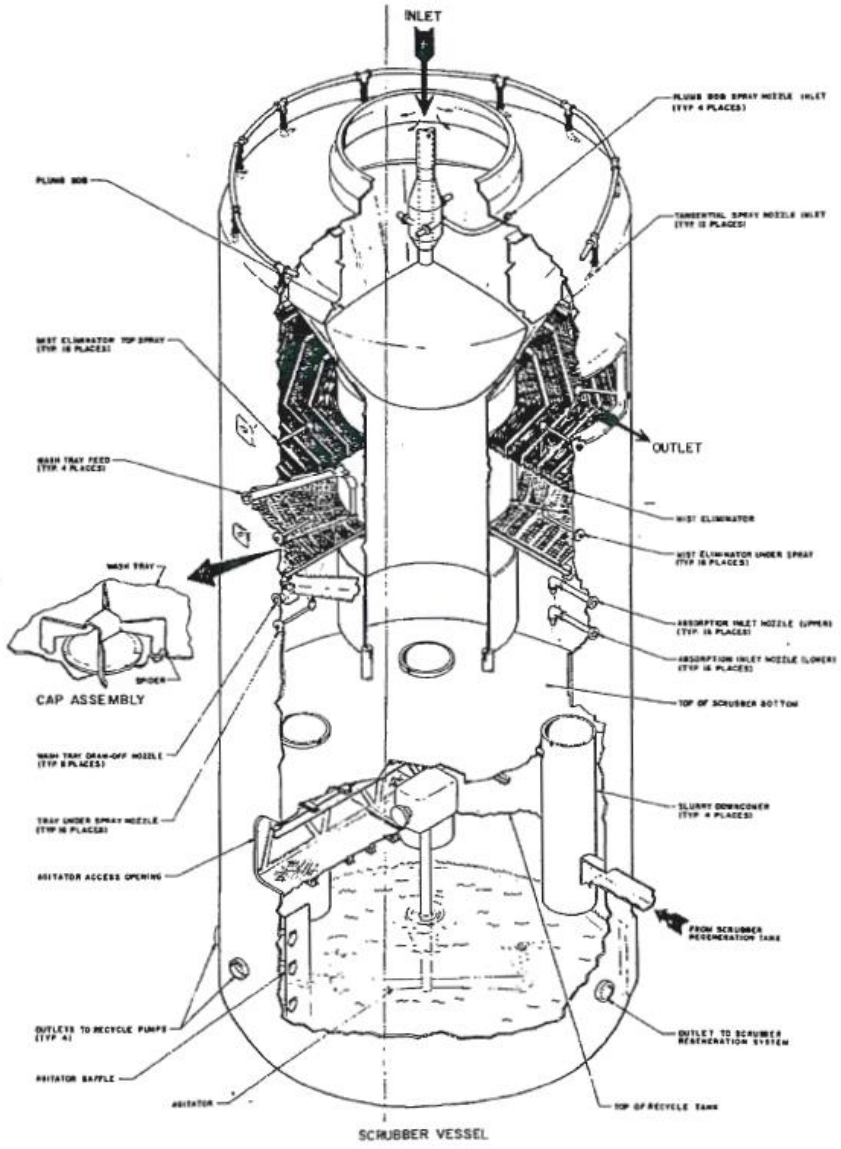


Figure IC-2: Typical Co|strip Units 3 & 4 Scrubber Vessel



II. Particulate CAM Plan Approach and Performance Indicators

The performance indicators of the particulate CAM plan to help ensure compliance to the particulate standard are Opacity and Particulate Matter Continuous Emission Monitors (PM CEMS). The operational parameter indicator of the particulate CAM plan to help ensure compliance to the particulate standard is scrubber plumb bob ΔP.

Opacity Performance Indicator

Opacity will be a performance indicator for assuring compliance with the PM limit. Currently the Unit has a Monitor Labs USI 560 Lighthawk opacity monitor installed on the stack. This is a double-pass, two detector in-situ analyzer that utilizes an electronically modulated intensity-controlled solid state LED to ensure stable operation. Basic system components include the transmissometer, the retroreflector and control unit in the stack; and remote readout that accompanies the B&W-Enertec DAHS in the plant control room. Percent opacity data is recorded as minute averages in the DAHS. Six-minute, hourly, and daily opacity averages are calculated utilizing the base minute data.

Performance Indicator Range

PM emissions on CSES Units 1-4 will be determined to be in compliance with the applicable limits when opacity is <20% as measured on a 6-hr. average. An opacity PM CAM Plan excursion occurs when the 6-hour average opacity is >20%. An excursion is not considered a violation of the Title V Permit, but will require a prompt investigation to identify and correct the condition, followed by a RM 5 test to confirm compliance with the particulate standard. An opacity CAM Plan excursion will be reported in quarterly reports to MDEQ for any 6-hr. average >20%.

Performance Indicator Justification

1. The 6-hr. average opacity indicator is based on the following rationale:
   A. Annual compliance performance tests have indicated that the PM standard is met when opacity is <20%. These Reference Method 5 performance tests consist of three runs conducted in approximately a 6 hour period.
   B. Regulatory PM test criteria are:
      - 40CFR60.56c(b)(1), *All performance tests shall consist of a minimum of three test runs conducted under representative operating conditions.*
   C. Opacity has never exceeded 20% during a CSES Units 1-4 PM compliance test that demonstrated compliance with the particulate standard; therefore, it is appropriate to use a 20% 6-hr. opacity indicator as assurance that the units are in compliance with the applicable PM emission limits.

2. Annual PM compliance testing has been conducted on CSES Units 1-4 since their initial commercial operations. The average results of the annual particulate compliance and PM CEM correlation tests since 2014 are presented in Table II-1.

3. Opacity Accuracy Audits (OAA) and Walkthrough Audits are conducted quarterly on CSES Units 1-4 COMS. Complete descriptions of these assessments can be found in the Talen Montana Continuous Emissions Monitoring Systems (CEMS) Quality Assurance (QA) Plan. Results of the 2014-2016 OAA's are presented in Table II-2. This audit data illustrates the excellent quarterly accuracy of the COMS.

Table II - 1
Stack PM Tests, EPA Method 5 and 5B

Unit	Date	lb./MMBtu	%Opacity
1	02/26/14	0.037	14.3
	06/05/14	0.027	14.2
	06/12/14	0.029	17.8
	12/03/14	0.030	15.1
	02/11/15	0.041	14.9
	06/16/15	0.039	17.2
	08/21/15	0.036	15.8
	11/17/15	0.037	17.0
	12/15/15	0.038	14.4
	01/14/16	0.037	16.8
	06/01/16	0.044	13.9
	06/09/16	0.036	13.9
	06/16/16	0.043	17.5
	08/16/16	0.032	12.8
	10/13/16	0.033	14.9
2	02/19/14	0.028	13.7
	12/30/14	0.031	18.5
	01/22/15	0.035	15.0
	04/14/15	0.035	15.3
	08/19/15	0.033	16.6
	11/17/15	0.039	16.9
	12/30/15	0.037	17.1
	02/05/16	0.034	14.8
	04/04/16	0.027	14.1
	09/08/16	0.025	13.5
	10/25/16	0.032	15.4

Unit	Date	lb./MMBtu	%Opacity
3	02/05/14	0.029	17.2
	07/10/14	0.025	13.7
	07/15/14	0.025	17.5
	12/03/14	0.020	16.8
	02/04/15	0.023	16.4
	06/17/15	0.016	15.8
	08/18/15	0.023	15.6
	11/18/15	0.019	16.2
	02/03/16	0.028	14.3
	02/19/16	0.028	15.8
	06/02/16	0.016	12.6
	08/09/16	0.023	14.3
	10/11/16	0.022	14.9
4	02/12/14	0.018	14.3
	12/29/14	0.023	18.7
	01/21/15	0.023	17.8
	06/18/15	0.017	16.7
	08/20/15	0.025	13.2
	11/18/15	0.026	17.9
	01/20/16	0.017	17.1
	04/06/16	0.019	15.2
	08/11/16	0.026	15.3
	10/12/16	0.020	15.6

Table II - 2
Opacity Accuracy Audit Results

Unit	Quarter	Analyzer Range			Response Time
		Low	Mid	High	
1	1st 2014	0.7	0.9	0.9	5.2
	2nd 2014	0.4	0.2	1.1	5.3
	3rd 2014	0.8	0.0	0.1	5.2
	4th 2014	0.4	0.5	0.3	
	1st 2015	0.6	0.5	0.8	5.3
	2nd 2015	0.1	0.3	0.7	5.0
	3rd 2015	0.3	0.5	1.0	5.2
	4th 2015	0.6	0.5	0.5	5.3
	1st 2016	0.5	0.4	0.7	5.4
	2nd 2016	0.7	0.6	0.5	5.2
	3rd 2016	0.6	0.5	0.7	5.0
	4th 2016				
2	1st 2014	1.2	0.9	0.2	5.4
	2nd 2014	0.3	0.1	0.9	4.9
	3rd 2014	0.7	0.6	0.5	5.1
	4th 2014	1.1	0.0	0.5	4.9
	1st 2015	0.6	0.4	0.6	5.2
	2nd 2015	0.4	0.5	0.2	4.8
	3rd 2015	0.2	0.2	0.7	5.4
	4th 2015	0.5	0.5	0.5	5.4
	1st 2016	0.8	0.7	0.4	5.3
	2nd 2016	1.0	0.9	0.2	4.8
	3rd 2016	0.8	0.6	0.3	5.0
	4th 2016				

Unit	Quarter	Analyzer Range			Response Time
		Low	Mid	High	
3	1st 2014	0.1	0.2	0.7	5.6
	2nd 2014	0.6	0.7	0.3	5.4
	3rd 2014	1.0	1.0	0.2	5.4
	4th 2014	1.0	1.1	0.3	5.3
	1st 2015	0.9	0.8	0.6	5.3
	2nd 2015	0.3	0.6	0.1	5.3
	3rd 2015	0.4	0.4	0.6	5.5
	4th 2015	0.7	0.6	0.4	5.3
	1st 2016	0.6	0.5	0.5	5.3
	2nd 2016	0.4	0.4	0.6	5.2
	3rd 2016	0.8	0.9	0.4	5.0
	4th 2016				
4	1st 2014	0.7	0.4	0.6	5.3
	2nd 2014	0.7	0.6	0.5	5.3
	3rd 2014	0.1	0.1	0.9	5.1
	4th 2014	1.9	2.2	1.4	5.3
	1st 2015	0.9	0.7	0.6	5.2
	2nd 2015	0.8	0.9	0.3	5.0
	3rd 2015	0.8	0.8	1.6	5.3
	4th 2015	0.5	0.4	0.7	5.2
	1st 2016	1.2	1.1	0.2	5.1
	2nd 2016	0.5	0.4	0.7	5.0
	3rd 2016	0.7	0.7	0.8	5.1
	4th 2016				

Limits: Cal Error <=3% at Low, Mid, & High Ranges; Response Time <= 10 Seconds

PM CEMS Performance Indicator

PM CEMS will be another performance indicator for assuring compliance with the PM limit. Each unit has a Sick Maihak Dusthunter SP100 installed on each stack. The measuring system works according to the scattered light measurement principle (forward dispersion). A laser diode beams the dust particles in the gas flow with modulated light in the visual range (wavelength approx. 650 nm). A highly sensitive detector registers the light scattered by the particles, amplifies the light electrically and feeds it to the measuring channel of a microprocessor as a central part of the measuring, control and evaluation electronics. The measuring volume in the gas duct is defined through the intersection of the sender beam sent and the receive aperture. Continuous monitoring of the sender output registers the smallest changes in brightness of the light beam sent which then serves to determine the measurement signal. Mg/m^3 data is recorded as minute averages in the B&W-Enertec DAHS. Hourly and daily PM averages are calculated utilizing the base minute data. Units 1 & 3 PM CEMs installations were completed in August 2014. PM CEMS installations on Units 2 & 4 were completed in February 2015.

The PM CEMS performance indicator was added to the CAM Plan as part of a settlement agreement between Sierra Club, MEIC, and PPL Montana dated February 12, 2014.

PM CEMS Performance Indicator Range

PM emissions on CSES Units 1-4 will be determined to be in compliance with the applicable CAM limits when the PM CEMS monitor is <73 mg/m^3 for Units 1&2 and <36 mg/m^3 for Units 3&4 as measured on a daily average.

PM CEMS Performance Indicator Justification

1. As specified in the settlement agreement, the PM CEMS will be operated and maintained as addressed below:

A. Installed according to manufacturer's standards.

B. Daily zero and span checks will be performed using manufacturer's standards.

C. The initial calibration/correlation will be based on three levels (zero, normal operations, and at scrubber operations that increase PM concentration, but not at a level that put Title V requirements at risk), using three RM 5 runs at normal operations and two RM 5 runs at the higher PM concentration. The zero level monitor response (when no PM is in the flue gas) will be estimated to be zero (e.g., 4 mA = 0 mg/acm).

   a. Unit 1 - The initial correlation resulted in a mathematical relationship of $y=0.2996x+3.4982$ with a R^2 of 0.9129, where x is the PM CEMS mg/m^3 value and y is the RM 5 mg/m^3 value. From this equation, an initial correlation was applied to the PM CEMS monitor.

   b. Unit 2 - The initial correlation resulted in a mathematical relationship of $y=0.5081x+5.1712$ with a R^2 of 0.7148, where x is the PM CEMS mg/m^3 value and y is the RM 5 mg/m^3 value. From this equation, an initial correlation was applied to the PM CEMS monitor.

   c. Unit 3 - The initial correlation resulted in a mathematical relationship of $y=0.2681x+3.3584$ with a R^2 of 0.7740, where x is the PM CEMS mg/m^3 value and y is the RM 5 mg/m^3 value. From this equation, an initial correlation was applied to the PM CEMS monitor.

   d. Unit 4 - The initial correlation resulted in a mathematical relationship of $y=0.2751x+$ 0.8389 with a R^2 of 0.9571, where x is the PM CEMS mg/m^3 value and y is the RM 5 mg/m^3 value. From this equation, a correlation was applied to the PM CEMS monitor.

D. The PM CEMS CAM Plan excursion limit in terms of mg/m^3 has been determined by conversion of the applicable compliance limit (lb/mmBtu) from section 1.B to units of mg/m^3 based on current operating conditions and may be changed if combustion (CO_2) or scrubber (H_20) operating conditions change significantly. It is important to note that the actual compliance limit (lb/mmBtu) is set by regulation and does not change. The Settlement Agreement calls for a CAM Plan excursion limit for the PM CEMS to be at a level less than the corresponding PM emission limit. The CAM Plan excursion limit for the PM CEMS will be 90% of the corresponding PM emission limit.

   a. Units 1&2, the CAM Plan excursion limit for the PM CEMS is 73 mg/m^3.

   b. Units 3&4, the CAM Plan excursion limit for the PM CEMS is 36 mg/m^3.

E. A PM CEMS CAM Plan excursion is not considered a violation of the Title V Permit, but will require a prompt investigation to identify and correct the condition, followed by a RM 5 test to confirm compliance with the particulate standard. A PM CEMS excursion will be reported in quarterly reports to MDEQ for any daily average above the respective PM CEMS CAM Plan excursion limit.

F. On a quarterly basis, one RM 5 test will be conducted to update the initial calibration/correlation. This test is comprised of three RM 5 runs. If the result from the average of the three runs differs from the initial correlation/calibration by 25% or more of the CAM Plan excursion limit, then the initial calibration/correlation will be repeated.

G. PM CEMS monitoring data and maintenance records will be maintained in accordance with the Title V operating permit requirements. PM CEMS data will be provided to MDEQ upon request. At a minimum, PM CEMS daily averages (mg/ m^3) will be submitted to MDEQ for each unit on a quarterly basis.

H. An on-going PM CEMS correlation adjustment will be made quarterly based on the correlation from all RM 5 test data.

Particulate CAM Operational Parameters (Range and Justification)

In addition to the performance indicators of opacity and PM CEMS, the CSES will also monitor an operational parameter to indicate proper on-going performance of the particulate control equipment. As described in the Control Technology Description; plumb bob ΔP is an important operating parameter for the control of particulate.

A review of historical plumb bob ΔP indicates that operation of the scrubbers with plumb bob ΔP greater than 21 inches water column helps ensure compliance with the applicable particulate emission limits found in section I.B. The control room operators monitor scrubber plumb bob ΔP on a regular basis to ensure proper operation and will take corrective action as needed to make sure the scrubber is operating at the proper plumb bob ΔP conditions. A daily average of the operating scrubber plumb bob ΔP's below 21 inches water column will initiate an action to promptly investigate and remedy the low plumb bob ΔP condition. This excursion is not considered a violation of the Title V Permit, but will be reported along with results of the investigation in the quarterly report.

The scrubber venturi spray system was previously identified as another operational parameter. A review of this parameter indicates that it is not an effective CAM Plan operational parameter because operation of the scrubber is dependent on the venturi sprays being in service anyway. If there are no venturi sprays, the scrubber is removed from service in a matter of minutes due to high temperatures and the Unit is reduced in load accordingly. As such, the scrubber venturi spray system has been removed as an operational parameter.

III. CAM Plan Summary

Performance Indicator - Opacity	
A. General Criteria	
1. Performance Indicator	Stack % Opacity
2. Measurement Approach	COMS
3. Performance Indicator Range	6-hour average opacity is <20%.
B. Performance Criteria	
1. Data Representativeness	Opacity is measured in the stack on a continuous basis.
2. Verification of Operational Status	An operator in the Colstrip SES control room is continually monitoring the performance indicators (opacity & PM CEMS) and the plant operational assessment parameters shown below
3. QA/QC Practices	Daily – COMS Calibration Drift
	Quarterly – Walkthrough Audit Assessment
	Quarterly – Opacity Accuracy Audit
4. Monitoring Frequency	Opacity data is collected & stored in the DAHS.
	Averaging Periods: 6-minute, hourly, and daily averages are calculated based on minute data.
5. Opacity Exceedance	6-minute average opacity excesses >20%, except that one six-minute period per hour of up to 27% opacity is allowed.
6. CAM Plan Opacity Excursion	6-hour opacity average >20%. An excursion is not considered a violation of the Title V Permit, but will require a prompt invrstigation to identify and correct the condition, followed by a RM 5 test to confirm compliance with the particulate standard. An opactiy CAM plan excursion will be reported in quarterly reports to MDEQ for any 6-hr. average >20%
7. Reporting	Reported on quarterly basis.

Performance Indicator - PM CEMS	
A. General Criteria	
1. Performance Indicator	Stack PM CEMS, mg/m^3
2. Measurement Approach	PM CEMS
3. Performance Indicator Range	Daily average <73 mg/mg^3 – Units 1&2
	Daily average <36 mg/m^3 – Units 3&4
B. Performance Criteria	
1. Data Representativeness	PM CEMS is measured in the stack
2. Verification of Operational Status	An operator in the Colstrip SES control room is continually monitoring the performance indicators (opacity & PM CEMS) and the plant operational assessment parameters shown below
3. Operations & Maintenance Practices	Install PM CEMS according to the manufacturer's standards
	Establish an initial calibration/correlation mathematical relationship
	Establish PM CEMS excursion limit in terms of mg/m^3
	Daily – PM CEMS Calibration Drift
	Quarterly Verification & Initial Correlation Update – RM 5 Test
4. Monitoring & Data Collection	PM CEMS is measured on a continuous basis.
	PM CEMS data is collected & stored in the DAHS.
	Averaging Period: Minute (Daily averages are calculated).
6. CAM Plan Excursion	Daily averages over 73 mg/m^3 for Units 1&2 and over 36 mg/m^3 for Units 3&4. A PM CEMS CAM Plan excursion is not considered a violation of the Title V Permit, but will require a prompt invrstigation to identify and correct the condition, followed by a RM 5 test to confirm compliance with the particulate standard. A PM CEMS excursion will be reported in quarterly reports to MDEQ for any daily average above the respective PM CEMS PM CAM Plan excursion limit.
7. Reporting	Reported on quarterly basis.

Plant Operational Assessment Parameter - Scrubber Plumb Bob ΔP	
A. General Criteria	
1. Performance Indicator	Scrubber Plumb Bob ΔP, inches H_2O
2. Measurement Approach	Plant Instrumentation
3. Performance Indicator Range	Daily average operating scrubber plumb bob ΔP >21" H_2O
B. Performance Criteria	
1. Data Representativeness	Scrubber Plumb Bob ΔP is measured at each scrubber vessel on a continuous basis.
2. Verification of Operational Status	An operator in the Colstrip SES control room is continually monitoring the scrubber plumb bob ΔP. Data is recorded and stored in the PI Historian Data System.
3. Operations & Maintenance Practices	PMs are performed to ensure accuracy. The operator may request maintenance if measurements appear to be inaccurate.
4. Monitoring & Data Collection	ΔP is monitored on a continuous basis. ΔP data is recorded and stored in the PI Historian Data System.
6. CAM Plan Excursion	Daily average operating scrubber plumb bob ΔP <21" H_2O. A daily average of the operating scrubber plumb bob ΔP's below 21 inches water column will initiate an action to promptly investigate and remedy the low plumb bob ΔP condition. This excursion is not considered a violation of the Title V Permit, but will be reported along with results of the investigation in the quarterly report.
7. Reporting	Reported on quarterly basis.

Appendix J Mercury Emissions Monitoring System (MEMS)

(These requirements are "State Only")

MEMS

a. For each Unit 1-4, Talen shall install, calibrate, certify, maintain, and operate an MEMS to monitor and record the rate of mercury emissions discharged into the atmosphere from all mercury emitting generating units (units) as defined in the Administrative Rules of Montana 17.8.740.

   (1) The MEMS shall be comprised of equipment as required in 40 CFR 75.81(a) and defined in 40 CFR 72.2.

   (2) The MEMS shall conform to all applicable requirements of 40 CFR Part 75.

   (3) The MEMS data will be used to demonstrate compliance with the emission limitations contained in Section III.I.1.

b. Talen shall prepare, maintain and submit a written MEMS Monitoring Plan to the Department.

   (1) The monitoring plan shall contain sufficient information on the MEMS and the use of data derived from these systems to demonstrate that all the gaseous mercury stack emissions from each unit are monitored and reported.

   (2) Whenever Talen makes a replacement, modification, or change in a MEMS or alternative monitoring system under 40 CFR Part 75 subpart E, including a change in the automated data acquisition and handling system (DAHS) or in the flue gas handling system, that affects information reported in the monitoring plan (e.g. a change to a serial number for a component of a monitoring system), then the owner or operator shall update the monitoring plan.

   (3) If any monitoring plan information requires an update pursuant to Section b.(2), submission of the written monitoring plan update shall be completed prior to or concurrent with the submittal of the quarterly report required in c. below for the quarter in which the update is required.

   (4) The initial submission of the Monitoring Plan to the Department shall include a copy of a written Quality Assurance/Quality Control (QA/QC) Plan as detailed in 40 CFR Part 75 Appendix B, Section 1. Subsequently, the QA/QC Plan need only be submitted to the Department when it is substantially revised. Substantial revisions can include items such as changes in QA/QC processes resulting from rule changes, modifications in the frequency or timing of QA/QC procedures, or the addition/deletion of equipment or procedures.

   (5) The Monitoring Plan shall include, at a minimum, the following information:

      (a) Facility summary including:

(i) A description of each mercury-emitting generating unit at the facility.

(ii) Maximum and average loads (in megawatts (MW)) with fuels combusted and fuel flow rates at the maximum and average loads for each unit.

(iii) A description of each unit's air pollution control equipment and a description of the physical characteristics of each unit's stack.

(b) Mercury emission control summary including a description of control strategies, equipment, and design process rates.

(c) MEMS description, including:

(i) Identification and description of each monitoring component in the MEMS including manufacturer and model identifications; monitoring method descriptions; and normal operating scale and units descriptions. Descriptions of stack flow, diluent gas, and moisture monitors (if used) in the system must be described in addition to the mercury monitor or monitors.

(ii) A description of the normal operating process for each monitor including a description of all QA/QC checks.

(iii) A description of the methods that will be employed to verify and maintain the accuracy and precision of the MEMS calibration equipment.

(iv) Identification and description of the DAHS, including major hardware and software components, conversion formulas, constants, factors, averaging processes, and missing data substitution procedures.

(v) A description of all initial certification and ongoing recertification tests and frequencies; as well as all accuracy auditing tests and frequencies.

(d) The Maximum Potential Concentration (MPC), Maximum Expected Concentration (MEC), span value, and range value as applicable and as defined in 40 CFR Part 75 Appendix A, 2.1.7.

(e) Examples of all data reports required in c. below.

c. Talen shall submit written, Quarterly Mercury Monitoring Reports. The reports shall be received by the Department within 30 days following the end of each calendar quarter, and shall include, at a minimum, the following:

(1) Mercury emissions. The reports shall include:

(a) For each Unit 1-4, the monthly average lb/TBtu mercury emission rate for each month of the quarter;

(b) For each Unit 1-4, the 12-month rolling average lb/TBtu emission rate for each month of the reporting quarter. The rolling 12-month basis is an average of the last 12 individual calendar monthly averages, with each monthly average calculated at the end of each calendar month; and

(c) For each Unit 1-4, the total heat input to the boiler (in TBtu) for each 12-month rolling period of the quarter.

(d) The 12-month facility-wide rolling average lb/TBtu mercury emission rate, calculated according to Section III.I.1, for each month of the quarter.

(2) Mercury excess emissions. The report shall describe the magnitude of excess mercury emissions experienced during the quarter, including:

(a) The date and time of commencement and completion of each period of excess emissions. Periods of excess emissions shall be defined as those emissions calculated on a rolling 12-month basis which are greater than the limitation established in Section III.I.1.

(b) The nature and cause of each period of excess emissions and the corrective action taken or preventative measures adopted in response.

(c) If no periods of excess mercury emissions were experienced during the quarter, the report shall state that information.

(3) MEMS performance. The report shall describe:

(a) The number of operating hours that the MEMS was unavailable or not operating within quality assurance limits (monitor downtime) during the reporting quarter, broken down by the following categories:

- Monitor equipment malfunctions;
- Non-Monitor equipment malfunctions;
- Quality assurance calibration;
- Other known causes; and
- Unknown causes.

(b) The percentage of unit operating time that the MEMS was unavailable or not operating within quality assurance limits (monitor downtime) during the reporting quarter. The percentage of monitor downtime in each calendar quarter shall be calculated according to the following formula:

$$MEMSDowntime\% = \left(\frac{MEMSDownHours}{OpHours} \right) \times 100 \quad \text{where}$$

MEMSDowntime% = Percentage of unit operating hours classified as MEMS monitor downtime during the reporting quarter.

MEMSDownHours = Total number of hours of MEMS monitor downtime during the reporting quarter.

OpHours = Total number of hours the unit operated during the reporting quarter.

(c) For any reporting quarter in which monitor downtime exceeds 10%, a description of each time period during which the MEMS was inoperative or operating in a manner defined in 40 CFR Part 75 as "out of control." Each description must include the date, start and end times, total downtime (in hours), the reason for the system downtime, and any necessary corrective actions that were taken. In addition, the report shall describe the values used for any periods when missing data substitution was necessary as detailed in 40 CFR 75.30.

(4) The quarterly report shall include the results of any QA/QC audits, checks, or tests conducted to satisfy the requirements of 40 CFR Part 75 Appendices A, B or K.

(5) Compliance certification. Each quarterly report shall contain a certification statement signed by the facility's responsible official based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall indicate:

(a) Whether the monitoring data submitted were recorded in accordance with the applicable requirements of 40 CFR Part 75 including the QA/QC procedures and specifications of that part and its appendices, and any such requirements, procedures and specifications of an applicable excepted or approved alternative monitoring method as represented in the approved Monitoring Plan.

(b) That for all hours where data are substituted in accordance with 40 CFR 75.38, the add-on mercury emission controls were operating within the range of parameters listed in the quality-assurance plan for the unit, and that the substitute values do not systematically underestimate mercury emissions.

(6) The format of each component of the quarterly report may be negotiated with the Department's representative to accommodate the capabilities and formats of the facility's DAHS.

(7) Each quarterly report must be received by the Department within 30 days following the end of each calendar reporting period (January-March, April-June, July-September, and October-December).

(8) The electronic data reporting detailed in 40 CFR Part 75 shall not be required unless Montana is able to receive and process data in an electronic format.

d. Talen shall maintain a file of all measurements and performance testing results from the MEMS; all MEMS performance evaluations; all MEMS or monitoring device calibration checks and audits; and records of all adjustments and maintenance performed on these systems or devices recorded in a permanent form suitable for inspection. The file shall be retained on site for at least 5 years following the date of such measurements and reports. Talen shall make these records available for inspection by the Department and shall supply these records to the Department upon request.

TALEN MONTANA

Gordon Criswell • Director, Environmental & Compliance
PO Box 38 • 580 Willow Avenue • Colstrip, MT 59323
(406) 748-5002• gordon.criswell@talenenergy.com

September 17, 2018

David L. Klemp

Air Quality Bureau Chief

Montana Department of Environmental Quality

Sent via email to: DKlemp@mt.gov

Dear Mr. Klemp,

In response to your August 31, 2018 letter requesting information related to compliance with the Mercury & Air Toxics Standard for Colstrip, the following response is provided. Each requested item identified in the 8/31/18 letter is stated first, followed by the response.

1. The daily calculation of the weighted 30-boiler operating day rolling average emission rate (WAER) for each of Units 1-4 as specified by Equation 2a at §63.10009(b)(2), from September 8, 2016 to present. The calculation must identify the emissions rate used for each unit and the source of the 30-day total heat input (HI) for that unit for each daily calculation. Provide a description of the calculation methodology, including rationale for the chosen methodology, and citation of applicable rules to justify the methodology used.

   A. The daily calculation of the weighted 30-boiler operating day rolling average emission rate (WAER) for each of Units 1-4 as specified by Equation 2a at 63.10009(b)(2), from September 8, 2016 to September 12, 2018 is provided in the attached excel spreadsheet titled Colstrip PM MATS DEQ Submittal 2018-09-17, tab DEQ Items 1&2. Note that the calculation is not performed "for each of Units 1-4", but data from each of Units 1-4 is used to calculate site-wide weighted 30-day rolling average emission rate per Equation 2a and it is identified in column R.

   B. The emission rate used for each unit, which is the most recent MATS Method 5 stack test result for that unit for each day, is identified in columns F-I.

   C. The daily heat input for each unit is identified in columns J-M and the rolling 30-boiler operating day heat input for each unit is identified in columns N-Q. Note that the spreadsheet also contains heat input data from 8/9/16 through 9/7/16 so that a rolling 30-day average could be calculated starting September 8, 2016. These data are in gray cells.

D. The relevant equation for calculating WAER is Equation 2-A from 40 CFR 63.10009. The equation as provided addresses both calculations for pollutants using continuous monitoring (the terms that include a summation from i=1 to p, on the left side of the equation) as well as for pollutants using stack testing (on the right side of the equation). For these calculations which are based on stack testing, only the right side of the equation is relevant.

$$WAER = \frac{\sum_{i=1}^{p}\left[\sum_{i=1}^{n}(Her_i \times Rm_i)\right]_p + \sum_{i=1}^{m}(Ter_i \times Rt_i)}{\sum_{i=1}^{p}\left[\sum_{i=1}^{n}(Rm_i)\right]_p + \sum_{i=1}^{m} Rt_i} \quad (Eq.\ 2a)$$

Where:

Her_i = hourly emission rate (*e.g.*, lb/MMBtu, lb/MWh) from unit i's CEMS for the preceding 30-group boiler operating days,

Rm_i = hourly heat input or gross output from unit i for the preceding 30-group boiler operating days,

p = number of EGUs in emissions averaging group that rely on CEMS or sorbent trap monitoring,

n = number of hours that hourly rates are collected over 30-group boiler operating days,

Ter_i = Emissions rate from most recent emissions test of unit i in terms of lb/heat input or lb/gross output,

Rt_i = Total heat input or gross output of unit i for the preceding 30-boiler operating days, and

m = number of EGUs in emissions averaging group that rely on emissions testing.

a. The numerator
    i. First multiplies two terms
        1. Ter_i, the unit-specific emission rate from the most recent emissions test in lb/MMBtu
        2. Rt_i, the unit-specific heat input in MMBtu for the preceding 30 boiler operating days
        3. The product of which equals mass emissions for that unit (lbs.)
    ii. Then sums the mass emissions for each unit across the four units
b. The denominator is simpler and just sums Rt_i for each unit across the four units (MMBtu's)

E. The 30-boiler operating day heat input is developed consistent with the definition in 40 CFR 63.10042.

Boiler operating day means a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in the EGU, excluding startup periods or shutdown periods. It is not necessary for the fuel to be combusted the entire 24-hour period.

a. Boiler operating day is determined using hourly data for each unit
b. Hours when the unit is in startup or shutdown are excluded consistent with the definition
c. To determine whether any fuel is combusted, both heat input and power output values are reviewed on an hourly basis. In a day, if there is an hour that is not startup or shutdown which has a non-zero value for either power output or heat input (or both), that day is a boiler operating day.
d. The 30-boiler operating day heat input value for a unit is calculated by summing the calculated daily heat input values for the current (or most recent) boiler operating day plus the 29-preceding boiler operating days.

2. Records of the daily heat input (HI) for each of Units 1-4 from September 8, 2016 to present. Please clearly demonstrate how these daily HI values are used in calculating the WAER.

The daily heat input (HI) for each of Units 1-4 from September 8, 2016 to September 12, 2018 is also provided in the attached spreadsheet, columns J-M. A daily heat input value is presented for a unit, if there was at least one hour of non-startup/shutdown heat input within that day. Each day's calculated 30-boiler operating day (BOD) heat input for a unit (in columns N-Q for Units 1-4, also referred to as Rt_i in equation 2a, is the total of the preceding 30 heat input values for the unit corresponding to the unit's preceding 30 boiler operating days (i.e., the last 30 days when there is at least one hour of operations under non-startup/shutdown condition). To sum values for the preceding 30 boiler operating days for a unit, the 30 boiler operating days do not have to be consecutive.

3. Records of the occurrence and duration of each startup and/or shut down for each of Units 1-4 from September 8, 2016 to present. Provide a narrative description of how Talen complies with the work practice standards of MATS during these occurrences and demonstrate how these situations are addressed in the WAER calculations.

The occurrence and duration of each startup and/or shut down for each of Units 1-4 from September 8, 2016 to September 12, 2018 is provided in the attached spreadsheet titled Colstrip PM MATS DEQ Submittal 2018-09-17, tab DEQ Item 3. The data in this tab are on an hourly basis and each startup and/or shut down hour is identified by a 1 designation. Unit 1 startup times are found in column E and Unit 1 shut down times are found in column D. Unit 2 startup times are found in column I and Unit 2 shut down times are found in column H. Unit 3 startup times are found in column M and Unit 3 shut down times are found in column L. Unit 4 startup times are found in column Q and Unit 4 shut down times are found in column P.

The Colstrip Steam Electric Station complies with the MATS work practice standards during startup and shut down by taking the following actions:

- All Continuous Emission Monitoring Systems (CMS) are operated during startup and shut down periods.
- Clean fuel, Liquefied Petroleum Gas (LPG) for Units 1&2 and Low Sulfur #2 Diesel Fuel Oil for Units 3&4, are used for startup.
- When firing on coal, all the applicable control technologies (Low-NOx systems, Mercury Control systems, and Wet Venturi Scrubber systems) are in operation.
- Records of startup/shut down periods are maintained.
- Dates of most recent boiler tune-ups and burner inspections are provided in the MATS Semi-annual Reports submitted to MDEQ.

Periods of startup and shut down are not included in the site-wide weighted average emission rate (WAER).

4. A description of all non-routine work performed, any operational changes, and any changes to the coal supply or quality at Units 3 and 4 for the period between the fourth quarter 2017 and the second quarter 2018 that may have impacted the PM emissions performance.

A review of activities from 4th quarter 2017 to 2nd quarter 2018 was conducted with engineers, operations, and maintenance; including the boiler and scrubber crews, to get a thorough understanding of any changes that may have impacted the PM emissions performance.

Coal supply or quality – all coal burned from 4th quarter 2017 through 2nd quarter 2018 were from the normal permitted mine areas. Coal quality analysis was reviewed including ash content, heating value, moisture, sulfur and ash characteristics. The coal quality varied during this period but was within contract specifications.

Relevant work and Operational changes between 4th quarter 2017 and 2nd quarter 2018

- Scrubber makeup water (pond return water) increased in solids concentration for two reasons;
    - Pond return level (3&4 EHP B Cell) was low due to forced evaporation of pond water during 2017 to eliminate water in the ash ponds and help ensure protection of groundwater. This level was raised to provide required make-up volume by transferring water from the 3&4 EHP F Cell which contained higher solids.
    - Additional water was transferred from the 3&4 EHP F Cell (higher solids) to pond return (3&4 EHP B Cell) to facilitate liner repairs at the 3&4 EHP F Cell and help ensure protection of groundwater.
- Low-NOx tuning at Units 3&4 boilers – optimizing the SmartBurn Low-NOx system to minimize NOx emissions.
- Although neither the continuous Opacity Monitors nor the PM CEMS provided an indication of an increased PM emission level across the time frame indicated, it appears that the characteristics of the PM had changed. The change, potentially the particle size distribution in the stack, appears to have changed the ratio of PM mass to detected concentration, i.e., the correlation curve of the PM CEMS. In other words, particles of a different size with more total mass may have been emitted, but the Opacity Monitors and PMCEMS were still "seeing" the same concentration in the stack gas. Colstrip is still investigating this issue to determine what could be done to prevent it from happening in the future.

5. A description of all inspection, maintenance, and operation activities associated with the boilers and venturi scrubbers since the deviations.

Quarterly MATS PM Test results were received on June 28, 2018 that indicated a deviation of the MATS PM limit. MDEQ was notified on June 28 and Unit 3 was removed from service on June 28 and Unit 4 was removed from service on June 29. Talen proposed and MDEQ acknowledged that limited operation of Units 3&4 for evaluation of a corrective action or for data gathering related to potential corrective action was a prudent approach to solving the issue.

An extensive inspection of the Units was conducted including the coal mills, boiler, ductwork, air preheater, scrubbers, and the stack. Cleaning, adjustments, and repairs were conducted as needed. Areas of inspection included:

- Coal Mills
  - Classifiers
  - Air flow controls
- Boiler
  - Windboxes
  - Separated Over Fire Air (SOFA) dampers
  - Top Over Fire Air (TOFA) dampers
  - Burners
- Ductwork
  - Air Preheater
  - Scrubber inlet ducts
  - Scrubber outlet ducts
- Scrubbers
  - Venturi/Plumb Bob area
  - Venturi/Plumb Bob sprays
  - Venturi & Absorption pumps
  - Absorption sprays
  - Wash Trays
  - Wash Tray sprays
  - Mist Eliminators
  - Mist Eliminator sprays
  - Reheaters
  - Reheater soot blowers
- Stack
  - liner

Unit 3 was off from June 28 – July 8 for this work, Unit 4 was off from June 29 – July 17 for this work. No major equipment issues were identified during these outages. Additional outages and inspections continued to occur as needed during the trouble shooting period as corrective actions were evaluated and implemented.

Four main areas were investigated to determine and address the cause of the 2nd quarter MATS PM test results on Units 3&4:

- **Compliance Test Method**
- **Fuel Quality**
- **Boiler Combustion**
- **Scrubber Performance**

Nationally recognized expertise was brought on-site to help conduct the investigation and implement corrective actions:

- AECOM – overall root cause investigation & scrubber expertise
- GE/Alstom – boiler combustion expertise
- SmartBurn – boiler combustion expertise
- Power Technical Services – boiler combustion expertise
- Munters – scrubber mist eliminator expertise
- Bison Engineering – stack testing expertise
- Air Control Techniques – stack testing & pollution control expertise

Compliance Test Method

Qualified Source Testing Individuals (QSTI Certified) conducted the PM tests. They verified that the proper method, procedures, QA/QC, and calculations were used. An audit of the testing was conducted following the EPA Air Emissions Testing Body (AETB) Manual. Independent side-by-side testing was conducted for single run tests, with consistent results between test groups.

Fuel Quality

Coal analysis including proximate analysis and ultimate analysis was reviewed. While variations in coal quality were observed, the results were within contract specifications.

Boiler Combustion

Coal mill performance was evaluated and compared to target guidelines related to coal grind (fineness) as well as fuel distribution in the boiler. Minor adjustments were made to some mills to meet the target guidelines. Some fouling/slagging was observed in the boiler which was cleaned up and adjustments and minor repairs were made to the furnace to help reduce slagging/fouling. Boiler conditions were evaluated and adjusted to establish a focus on overall furnace condition compared to the low-NOx focus that had recently occurred. Boiler conditions were also evaluated to ensure excess SO3/acid mist, a condensable PM that could affect the results, was not being formed and emitted.

Scrubber Performance

The entire scrubber system from the inlet ductwork to the stack were inspected. Cleaning, adjustments, and repairs were completed as necessary. Evaluation of scrubber performance focused on three main areas – liquid spray flow, flue gas flow, and scrubber chemistry.

Liquid spray flow – the wet venturi scrubbers remove both particulate and SO2 and proper spray flow to the different sections of the scrubber are important. The scrubber sprays include the venturi sprays, plumb bob sprays, absorption sprays, wash tray sprays, and mist eliminator sprays. All sprays were inspected and evaluated during operation to verify proper spray. Adjustments were made (flow orifices installed) to the venturi/plumb bob sprays to provide a more effective balance of sprays in this area. This venturi/plumb bob section of the scrubber is where most of the particulate removal occurs.

Flue gas flow – overall flue gas flow and proper distribution of the flue gas is important to effective scrubber operation. The mist eliminator section of the scrubber controls carry-over of droplets from the wet scrubbing process. These droplets contain solids which can contribute to particulate emissions. Testing of the mist eliminator section of the scrubber indicated that, although meeting manufacturer specifications, flue gas flow through the mist eliminators was not optimally balanced, resulting in areas of higher flows. A mist eliminator flow distribution plate was installed on all scrubbers to better balance the flue gas flow through this area of the scrubber and help keep velocities at a level for proper mist eliminator performance. A more detailed description of this work is described in the De Minimis Notification for Changes to Colstrip Units 3&4 Scrubbers – Scrubber Flow Distribution Plates that was submitted to MDEQ on August 24, 2018 (this notification is attached).

Scrubber Chemistry – A review of scrubber chemistry, primarily scrubber solids, was conducted to evaluate previous levels in comparison to current levels. There are two separate scrubber water supplies that were evaluated, scrubber recycle tank water and scrubber wash tray water. Historic levels of scrubber recycle tank solids range from 25–30% solids. Levels in early 2018 were up to 35% solids. Historic levels of scrubber wash tray solids range from 10-15% solids. Levels in early 2018 were up to 17% solids. Testing of scrubber chemistry indicates that a target of 20-25% recycle tank solids and 10-15% wash tray solids is good point that balances the benefits of lower solids in regards to carry-over and PM emissions with the benefits of higher solids that help prevent scale buildup which results in equipment shutdown for cleaning. Scrubber additives were also tested to determine if scrubber performance could be improved, with the results from that testing indicating little to no improvement in scrubber performance.

6. Records of the date and time (start and end) for each period of noncompliance from June 21, 2018 to present.

MATS PM Deviations are recorded for daily rolling 30-day site-wide average above 0.030 lb/mmbtu from June 21, 2018 through September 5, 2018. Data provided in response to Request for Information #1 shows compliance with the site-wide MATS PM limit from September 6, 2018 to present.

Unit 4 MATS PM Compliance Test conducted on 9/6/18 demonstrated a PM emission rate of 0.021 lb/mmbtu. Unit 3 MATS PM Compliance Test conducted on 9/11/18 demonstrated a PM emission rate of 0.024 lb/mmbtu.

If you have any questions regarding this response to your information request, please don't hesitate to contact me at 406-748-5002 or gordon.criswell@talenenergy.com.

Sincerely,

Gordon Criswell

Gordon Criswell

Director, Environmental & Compliance

Talen Montana

August 31, 2018

Gordon Criswell
Talen Montana, LLC
Colstrip Steam Electric Station
P.O. Box 38
Colstrip, MT 59323

Sent via email to: Gordon.criswell@talenenergy.com

RE: Request for information related to compliance with Mercury & Air Toxics Standard

Dear Mr. Criswell:

The Montana Department of Environmental Quality (Department) requests additional information regarding recent filterable particulate matter (PM) emissions tests and related facility operations at the Colstrip Steam Electric Station (CSES).

Talen Montana, LLC (Talen) conducted PM emissions testing at CSES on June 21, 2018 and June 26, 2018 for Units 3 and 4, respectively. Test results indicated, and the Source Test Report submitted by CSES confirmed, that CSES was operating in excess of the applicable emission limit contained in Title 40 Code of Federal Regulations Part 63 (40 CFR 63) Subpart UUUUU, also referred to as the Mercury & Air Toxics Standard (MATS).

To fully address the extent of this matter, DEQ requests that Talen provide the following information:

1. The daily calculation of the weighted 30-boiler operating day rolling average emission rate (WAER) for each of Units 1-4 as specified by Equation 2a at §63.10009(b)(2), from September 8, 2016 to present. The calculation must identify the emissions rate used for each unit and the source of the 30-day total heat input (HI) for that unit for each daily calculation. Provide a description of the calculation methodology, including rationale for the chosen methodology, and citation of applicable rules to justify the methodology used.

2. Records of the daily heat input (HI) for each of Units 1-4 from September 8, 2016 to present. Please clearly demonstrate how these daily HI values are used in calculating the WAER.

3. Records of the occurrence and duration of each startup and/or shut down for each of Units 1-4 from September 8, 2016 to present. Provide a narrative description of how Talen complies with the work practice standards of MATS during these occurrences and demonstrate how these situations are addressed in the WAER calculations.

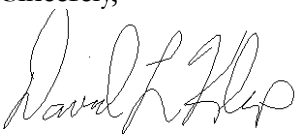
4. A description of all non-routine work performed, any operational changes, and any changes to the coal supply or quality at Units 3 and 4 for the period between the fourth quarter 2017 and the second quarter 2018 that may have impacted the PM emissions performance.

5. A description of all inspection, maintenance, and operation activities associated with the boilers and venturi scrubbers since the deviations.

6. Records of the date and time (start and end) for each period of noncompliance from June 21, 2018 to present.

The Department is requesting this information, subject to Section V.A.4 of Talen's Operating Permit (OP0513-14), be submitted no later than September 17, 2018. Should Talen have any questions or concerns, please contact me at (406) 444-0286 or dklemp@mt.gov. Thank you for your attention to this matter.

Sincerely,



David L. Klemp
Air Quality Bureau Chief
Montana Department of Environmental Quality

DEQ
Montana Department of Environmental Quality

Memo

TO: House Energy, Technology and Federal Relations
-Representative Zolnikov – Chair

FROM: Jenny Chambers, Waste Management & Remediation Division Administrator
Aimee Reynolds, Contaminated Site Cleanup Bureau Chief

DATE: January 23, 2019

SUBJECT: Colstrip Steam Electric Station Administrative Order on Consent Report

Thanks for allowing us to provide the committee an update on the status of the work DEQ has done to address leaking coal ash ponds at the Colstrip Steam Electric Station (CSES).

The Colstrip Administrative Order on Consent (AOC) is the result of an enforcement action taken by Montana Department of Environmental Quality (DEQ) that requires Talen Montana, LLC (Talen; formerly PPL Montana, LLC) to address groundwater contamination resulting from coal ash disposal ponds associated with the CSES. The plant ownership is divided between six parties: Talen, PacifiCorp, Puget Sound Energy, Portland General Electric Company, Avista Corporation, and NorthWestern Energy. However, as the operator, Talen is responsible for the remediation of the coal ash ponds and the AOC is binding upon Talen's successors. The AOC was signed by Talen and DEQ in 2012, and follows a sequential process to address site characterization and remediation strategies and implementation. Talen is currently progressing through the process but has not yet initiated the final remedy which will likely require several hundred million dollars.

The CSES has been in service since 1975 and consists of four units. Units 1 and 2 are the older of the four units, with operation beginning in 1975. Units 3 and 4 came online in 1983 and 1985, respectively. The total capacity of all four Units is 2276-megawatts, making it the second-largest coal-fired plant in the West. The AOC divides the site into three distinct areas in accordance with the configuration of the ponds: the Plant Site Area, the Units 1&2 Area, and the Units 3&4 Area. The contaminants of concern for the three areas are boron, sulfate, molybdenum, manganese, lithium, selenium, and cobalt.

The AOC outlines the process required to document cleanup actions at the CSES. Talen prepares all documents and submits them to DEQ for review and approval. The AOC also provides for public participation. The documents are prepared for each of the three areas designated in the AOC and consist of (in sequential order of submission):

- Site Characterization Reports – all three reports approved
- Cleanup Criteria and Risk Assessment Reports – two reports conditionally approved, one report under DEQ review
- Remedy Evaluation Reports – one report approved, two reports under DEQ review
- Pond Closure Plans – all three reports conditionally approved

- Remedial Design Reports – one report being prepared, two reports will follow approval of Remedy Evaluation Reports
- Final Remedial Action Reports – will follow remedial action

The AOC provides for public participation in the form of public comment periods for major AOC documents and annual public meetings. DEQ may hold additional public meetings to address specific issues and/or documents upon public request. DEQ also holds quarterly project update calls for a stakeholder group, and allows for open discussion between interested parties and the department.

Under the AOC, financial assurance is required in three phases: (1) to cover five years of current operating costs for remediation; (2) to cover the costs of the DEQ-approved remedy; and (3) pond closure. DEQ currently holds $80,157,908 that cover the approved portions of the remedial process for the three areas. All six owners have provided their portion of this financial assurance as surety bonds under agreements they have with Talen, as the operator. The remaining final assurance will be provided once DEQ chooses the final remedies for all the areas. DEQ anticipates this will occur by the end of 2019. The total cost of the remedies for all three areas could be as much as $400 to $700 million.

There are other issues associated with the CSES. These include two 2016 Settlement Agreements. One agreement between the owners and several non-profit environmental organizations requires that Talen or any future owners decommission Units 1 and 2 of the facility. The state was not a party to that agreement. The second Settlement Agreement was between the owners, the non-profit organizations, and the state and requires that Units 3 and 4 switch to dry ash disposal. The facility operators also must comply with Federal Coal Combustion Residual (CCR) regulations and Montana Coal-Fired Generating Unit Remediation Act, which requires submittal of a decommissioning plan to the DEQ and cover the cost of the decommissioning.

Thanks again for allowing us to provide additional information. If you have any questions, please let us know.

– Jenny Chambers

Contact Information:

Jenny Chambers	DEQ Waste Management & Remediation Division Administrator	jchambers@mt.gov	444-6383 or 475-2140
Aimee Reynolds,	DEQ Contaminated Site Cleanup Bureau Chief	areynolds@mt.gov	444-6435 or 459-8761

Research Brief: Westmoreland Coal Is in Trouble

Institute for Energy Economic and Financial Analysis
IEEFA.org

February 2018

Seth Feaster, Energy Data Analyst

Overview

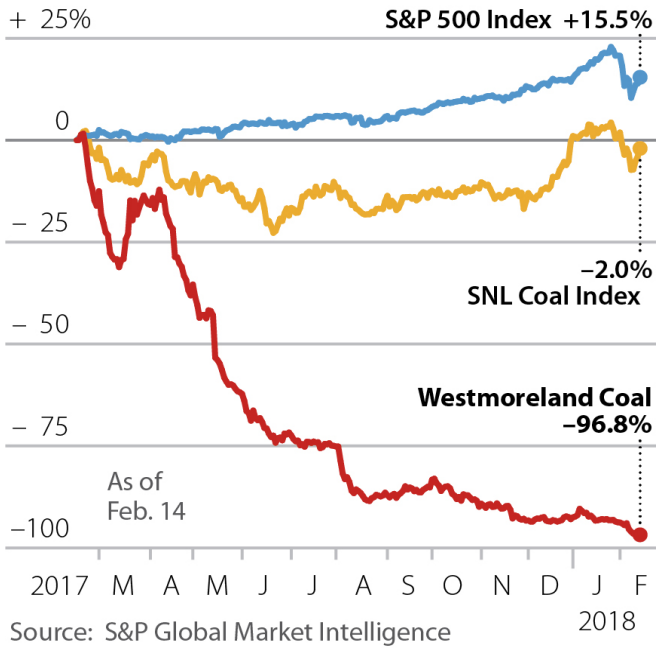
Colorado-based thermal-coal producer Westmoreland Coal Co, which had $1.5 billion in revenue and 3,200 employees in 2016, has been losing money quarter after quarter for the past few years as electricity-generation markets have moved away from coal.

The company's difficulties are far-reaching. Its holdings include major assets across a broad geographic area that includes Ohio, Montana, Wyoming, New Mexico, and Alberta, Canada.

The company has a market capitalization of only about $10 million (as of Feb. 15), following a 97 percent fall in its stock price over the past year, and shares are now trading well under a dollar. This stock collapse has occurred as the broader stock market has risen substantially. Westmoreland Coal is weighed down by more than $1.6 billion in debt, according to S&P Global Ratings, which gives them a credit rating of CCC, a junk rating that is so far below that of investment grade debt that it can be considered speculative. S&P Global Ratings downgraded Westmoreland this past November and warned at the time of possible default.

Westmoreland Coal Stock Performance

The company's shares, at $0.55 on Feb. 14, have lost 97 percent of their value over the past year. At the same time, other coal stocks were down slightly while the broader stock market gained significantly.



Source: S&P Global Market Intelligence

The company's CEO left at the end of November, and Westmoreland today is negotiating with lenders in talks that could allow those lenders to take ownership of Westmoreland assets in Ohio and Wyoming.

Risk is Growing for Investors; Ratepayers and Taxpayers in New Mexico and Montana Could Be Affected as Well

The growing possibility of a bankruptcy by Westmoreland raises risk not just to investors, but to electric ratepayers and taxpayers in some areas where the company does business. Effects could include job losses; loan defaults; mine closures; difficulties in paying for mine reclamation; and local and state and federal government revenue losses. Westmoreland could also run into trouble meeting long-term coal delivery contracts.

Those risks are particularly high in New Mexico, where the company borrowed $125 million from an affiliate of Public Service of New Mexico, the largest utility in the state, to buy the San Juan mine, which is the exclusive supplier to the San Juan Generating Station near Farmington. Public Service of New Mexico (PNM) retired two of four units at San Juan in December, cutting coal demand at the plant in half, and announced plans to close the remaining two units by 2022, raising obvious questions as to how Westmoreland will repay the $125 million loan. Also at issue: the true value of the mine itself.

In Montana, the company owns three mines—Absaloka, Rosebud and Savage—under growing pressure from declining demand and low coal prices. Only a few years ago, the owners of the 2,100-megawatt Colstrip Power Plant, supplied by the adjacent Rosebud mine, expected the plant to run well into the 2040s. Now, the utilities that own Colstrip plan to shut units 1 and 2 by 2022, and Colstrip's largest utility co-owner says it is prepared to shut the remaining units, 3 and 4, by 2027, almost two decades earlier than expected.

Westmoreland is proceeding nonetheless and inexplicably with plans to expand the Rosebud mine. Regulators involved with decisions on Westmoreland's mining permit, lease applications for extension, and reclamation liabilities would do well to be proceed with wariness. Vanishing demand for coal locally, regionally and nationally do not bode well.

Distress in Ohio

The immediate source of Westmoreland's current financial distress, and a potential trigger for a bankruptcy filing for the company, centers on $300 million in debt owed by its limited-partnership subsidiary, Westmoreland Resource Partners LP (WMLP).

The subsidiary was created in 2014 when Westmoreland acquired Oxford Resources. It owns about 10 thermal coal mines in Eastern Ohio and one in Wyoming. Its customer base is not diversified. Nearly 80 percent of Westmoreland Resource Partners' sales

went to just three companies in 2016: AEP, Pacificorp Energy, and the East Kentucky Power Cooperative.

The acquisition that led to the creation of the subsidy was hailed as an advantageous one. But the promised benefits have failed to emerge, and the subsidiary is now sinking under the weight of its debt. Westmoreland seems to be trying to avert bankruptcy by transferring all of WMLP'S assets to it lenders—along perhaps with other assets—but no agreement has been reached.

If these negotiations fail, bankruptcy could be around the corner.

Company Missteps and Industry Headwinds

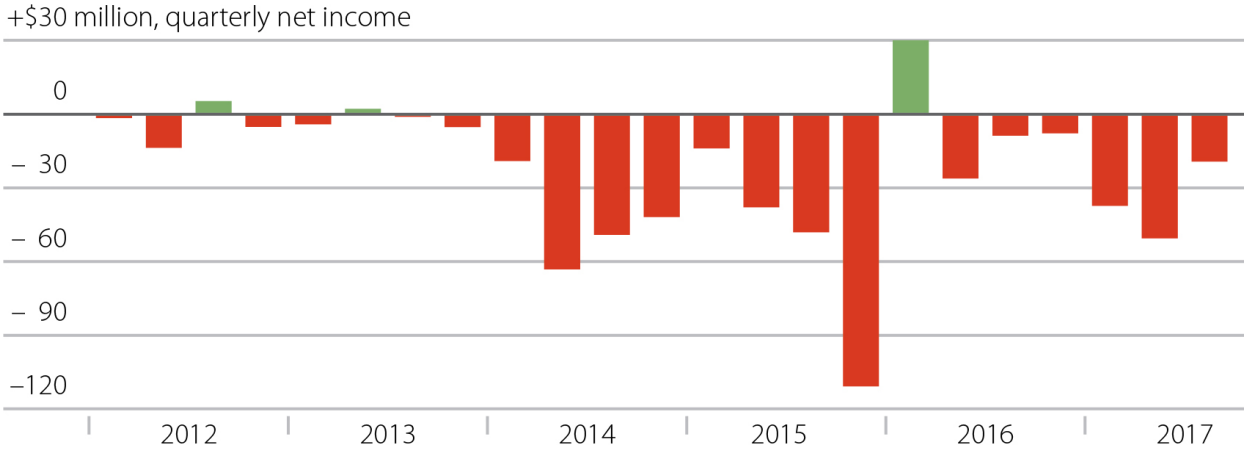
Because of its debt load, Westmoreland Coal has little room to maneuver.

First, their strategy of focusing on mines with power plants nearby (called mine-mouth plants) hasn't worked out well. That approach was originally seen by analysts as advantageous stabilizing for having a large, long-term customer dependent on using the specific coal mined nearby. Instead, it has often proven the opposite: mines have been more vulnerable to the utility decisions and market forces at a single plant; isolation from transportation networks has made it difficult or impossible to gain alternative customers; and these mines tend to be more susceptible to uncompetitive operational cost structures when mining challenges emerge or coal demand at the plant decreases.

In Texas, the company's Jewett lignite mine, whose only customer was NRG's Limestone Plant, was closed and began a reclamation program at the end of 2016 after NRG

In Most Quarters, Red Ink

Westmoreland Coal's quarterly net income reflects the financial difficulty the company has been having. In the 23 quarters starting in 2012, they reported only three quarters with profits.



Source: S&P Global Market Intelligence, based on company SEC filings

cancelled its coal contract two years early and switched to coal produced in the Powder River Basin by a different mining company.

Westmoreland's Beulah Mine in North Dakota, next to the Coyote Generating Plant, has struggled since mid-2016 after that plant's coal contract was also lost to a competitor.

Public Service of New Mexico's decision to transition away from coal-fired electricity has resulted in a sharp drop in coal demand and higher depreciation, depletion and amortization expenses for Westmoreland by way of its San Juan mine ownership.

The company has been plagued by other problems.

Last year, it retired two coal-fired generating units it had built in North Carolina in the 1990s, as low power prices made running those plants uneconomic; Westmoreland had already written off over $130 million in losses for those plants.

In Canada, Westmoreland's four coal mines in Alberta and two in Saskatchewan, which sell primarily to Canadian electric utilities or for export to Asia, are imperiled as Alberta implements a phase-out of coal use by 2030 (Alberta's government has said the province produces more coal pollution than all other Canadian provinces combined). Two of Westmoreland's key power-producing customers, ATCO and TransAlta, announced their own, accelerated plans to eliminate coal and convert their plants to natural gas by 2020 and 2022, respectively. The companies say that abundant supplies and low prices for natural gas in the province make the early transition financially compelling.

Further, Westmoreland is facing the same headwinds hampering the rest of the U.S. coal industry.

Utilities across the country continue to retire coal-fired units at a rapid pace, which cuts heavily into overall demand for coal. Many plants' advanced age and relatively high maintenance and operating costs are making them uneconomic to run in competitive electric markets, where cheap natural gas and the falling cost of wind and solar generation are relentlessly stealing market share.

The coal mining industry as a whole has not adjusted to lower demand, however, leading to an intensely competitive, oversupplied thermal coal market with low- or nonexistent-profit margins for many producers. Companies that appear to be doing better than some include those that have already gone through bankruptcy recently; that produce metallurgical coal, which feeds a separate market with higher prices at the moment; or that are able to export thermal coal, particularly to Asia.

While Westmoreland does export a limited amount of coal to Asia, it does not produce metallurgical coal and is almost entirely dependent on selling to U.S. and Canadian power generators.

Summary: Westmoreland Is in a Precarious Financial Position

The company's current stock price is currently trading around 50 cents a share, reflecting an almost total loss in value over the past year. Westmoreland is well over a billion dollars in debt and faces debt-service costs that will only increase as interest rates rise. Its debt is in junk-bond territory and deteriorating. It continues to report losses, quarter after quarter. Its negotiations with lenders has led it to try to give away assets to avoid default. Intense competition, low prices, and overall falling demand for coal are also buffeting the company.

All of these suggest that Westmoreland is in a precarious financial position that stands to adversely affect its business and potentially expose investors, lenders—and, in some instances, ratepayers and taxpayers—to fallout should the company go bankrupt.

About IEEFA

The Institute for Energy Economics and Financial Analysis conducts research and analyses on financial and economic issues related to energy and the environment. The Institute's mission is to accelerate the transition to a diverse, sustainable and profitable energy. http://ieefa.org

Important Information

About the Author

Seth Feaster is an IEEFA energy-data analyst and former data analyst for the New York Times and the Federal Reserve of New York.