

Robert L. Sterup
Brown Law Firm, PC
315 North 24th Street
Billings, Montana 59101
Telephone: (406) 248-2611
Facsimile: (406) 248-3128
rsterup@brownfirm.com

Barry Barnett (*pro hac vice* forthcoming)
Susman Godfrey L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
bbarnett@susmangodfrey.com
Attorneys for Defendant Talen Montana, LLC
Additional Attorneys listed in signature block

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

Portland General Electric Company;
Avista Corporation; PacifiCorp; and
Puget Sound Energy, Inc.,

Plaintiffs,

v.

NorthWestern Corporation; Talen
Montana, LLC; Austin Knudsen, in his
official capacity as Attorney General
for the State of Montana,

Defendants.

Case No. 1:21-cv-00047-SPW-KLD

**Defendant Talen Montana, LLC's
Answer to Plaintiffs' First Amended
Complaint**

In accordance with FRCP 12, Talen Montana, LLC (“Talen Montana”) provides this answer to Plaintiffs’ First Amended Complaint (the “Complaint”).

All allegations not expressly admitted are denied.

Introduction

1. Talen Montana admits that Plaintiffs purport to seek an injunction prohibiting Montana's Attorney General from enforcing Senate Bill 266 against them, as well as a declaration that Senate Bill 266 is unconstitutional. Talen denies all remaining allegations in Plaintiffs' paragraph 1 and specifically denies that Plaintiffs are entitled to such an injunction.

2. Talen Montana admits that Plaintiffs, NorthWestern Corporation, and Talen Montana each own an interest in the Colstrip Steam Electric Station, which consists of two coal-fired electric generation units in Colstrip, Montana for which Talen Montana is the operator. Talen also admits that the two units are governed by an Ownership and Operation Agreement, dated May 6, 1981, as amended. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 2, and specifically denies the implication that the arbitration provisions in the O&O Agreement are valid and enforceable.

3. Talen Montana admits that both Washington, *see* RCW 19-405, and Oregon, *see* ORS 757.518(2), have passed laws relating to coal-fired generation. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 3.

4. Talen Montana admits that the Montana legislature passed Senate Bill 266 and that Montana's governor signed that bill into law. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 4.

5. Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 5.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 6.

7. Talen Montana admits that Montana Senator Steve Fitzpatrick was a sponsor of Senate Bill 266 and that Plaintiffs have quoted a statement from Montana's governor. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 7.

8. Paragraph 8 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 8.

9. Paragraph 9 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 9.

10. Paragraph 10 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 10.

11. Talen Montana admits that Plaintiffs purport to challenge the constitutionality of Senate Bill 265. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 11.

12. Talen Montana admits that Plaintiffs have quoted from Senate Bill 265 and that Senate Bill 265 is retroactive to January 1, 2021. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 12.

13. Paragraph 13 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 13.

14. Paragraph 14 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 14.

15. Talen Montana admits that Talen Montana and NorthWestern testified in favor of Senate Bill 265. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 15.

16. Talen Montana admits that NorthWestern has served a demand for arbitration. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 16.

17. Talen Montana denies the allegations in Plaintiffs' paragraph 17.

Parties

18. Talen Montana admits the allegations in Paragraph 18.

19. Talen Montana admits the allegations in Paragraph 19.

20. Talen Montana admits the allegations in Paragraph 20.

21. Talen Montana admits the allegations in Paragraph 21.

22. Talen Montana admits the allegations in Paragraph 22.

23. Talen Montana admits that it is an independent power producer, not a utility that is regulated by a state commission. Talen Montana also admits that it is the Operator of Colstrip, with duties defined in the O&O Agreement. Talen Montana also admits that it is a Delaware limited liability company and a wholly owned subsidiary of Talen Montana Holdings, LLC, which is a wholly owned subsidiary of Talen Energy Supply, LLC, which is a wholly owned subsidiary of Talen Energy Corporation, which is a Delaware corporation with its principal place of business in Texas. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 23.

24. Talen Montana admits that Austin Knudsen is the Attorney General of Montana. The remaining allegations in Plaintiffs' paragraph 24 are legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the remaining allegations in Plaintiffs' paragraph 24.

Venue and Jurisdiction

25. Paragraph 25 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 25.

26. Paragraph 26 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 26.

27. Paragraph 27 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 27.

The O&O Agreement

28. Talen Montana admits that Colstrip Units 3 and 4 are each 740 MW coal-fired electrical generation units and that, along with other property and rights, are referred to in the O&O Agreement as the "Project." Talen Montana denies the remaining allegations in Plaintiffs' paragraph 28.

29. Talen Montana admits the allegations in Plaintiffs' paragraph 29.

30. Talen Montana admits that the O&O Agreement is an agreement between and among the co-owners, and that it was signed in 1981 and has been amended four times. Talen Montana also admits that the O&O Agreement sets

forth Talen Montana's rights and obligations as Operator. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 30.

31. Talen Montana admits that Plaintiffs have quoted from the documents they cite. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 31.

32. Talen Montana admits the allegations in Plaintiffs' paragraph 32.

33. Talen Montana admits that Talen Montana and NorthWestern have entered into a vote sharing agreement. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 33.

34. Talen Montana admits that the O&O Agreement provides voting procedures based on Project Shares. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 34.

35. Talen Montana denies the allegations in Plaintiffs' paragraph 35.

36. Talen Montana denies the allegations in Plaintiffs' paragraph 36.

37. Talen Montana admits that Plaintiffs have quoted from the O&O Agreement and that the co-owners cannot unreasonably withhold their approval of Talen Montana's proposed budgets. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 37.

38. Talen Montana denies the allegations in Plaintiffs' paragraph 38.

State Restrictions on Coal-Fired Electricity and the Future of Colstrip

39. Talen Montana admits the allegations in Plaintiffs' paragraph 39.

40. Talen Montana admits that Washington has enacted Wash. Rev. Code § 19.405.030(1)(a). Talen Montana denies the remaining allegations in Plaintiffs' paragraph 40.

41. Talen Montana admits that Oregon has enacted Or. Rev. Stat. 757.518. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 41.

42. Talen Montana denies the allegations in Plaintiffs' paragraph 42.

43. Talen Montana lacks sufficient knowledge or information to form a belief about the truth of the allegations in Plaintiffs' paragraph 43, and therefore denies the allegations in Plaintiffs' paragraph 43.

44. Talen Montana admits that it is an independent power producer and not a utility, and that Talen Montana wants to keep Colstrip running as long as it is economically viable and consistent with Prudent Utility Practice to do so. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 44.

45. Talen Montana admits that NorthWestern is a public utility. Talen Montana lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Plaintiffs' paragraph 45, and therefore denies the remaining allegations in Plaintiffs' paragraph 45.

Colstrip Owners' Pending Arbitration

46. Talen Montana admits that, in the past, there have been disputes among the co-owners. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 46.

47. Talen Montana admits that NorthWestern sent its co-owners a letter dated February 9, 2021 from which Plaintiffs selectively quote. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 47.

48. Talen Montana admits that on March 12, 2021, NorthWestern sent what the co-owners have referred to as a demand for arbitration and that Plaintiffs have selectively quoted from that document. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 48.

49. Talen Montana admits the allegations in Plaintiffs' paragraph 49, except to the extent the allegations imply that there is a ripe dispute among the parties, which Talen Montana denies.

50. Talen Montana admits that the Committee members unanimously approved the 2021 budget for Colstrip on March 22, 2021. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 50.

51. Talen Montana admits that on April 20, 2021, NorthWestern amended what the co-owners have referred to as a demand for arbitration and that Plaintiffs have selectively quoted from that document. Talen Montana lacks sufficient

knowledge or information to form a belief about the truth of the remaining allegations in Plaintiffs' paragraph 51, and therefore denies the remaining allegations in Plaintiffs' paragraph 51.

52. Talen Montana admits the allegations in Plaintiffs' paragraph 52.

53. Talen Montana admits that it responded to NorthWestern on April 23, 2021. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 53.

54. Talen Montana denies the allegations in Plaintiffs' paragraph 54.

55. Talen Montana admits the allegation in Plaintiffs' Paragraph 55.

Senate Bill 266

56. Talen Montana admits that the Montana Legislature considered Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 56.

57. Talen Montana admits that it spoke in favor of Senate Bill 266 and encouraged members of the Montana Legislature to pass Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 57.

58. Talen Montana admits that Senate Bill 266 is attached to the Complaint as Exhibit A.

59. Talen Montana denies the allegations in Plaintiffs' paragraph 59.

60. Talen Montana admits that the Montana Senate and House passed Senate Bill 266 and that Montana's governor signed the bill into law on May 3,

2021. Talen Montana also admits that the bill is retroactive to January 1, 2021. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 60.

61. Talen Montana admits that Senate Bill 266 amends Montana's Consumer Protection Act and that Plaintiffs have selectively quoted from Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 61.

62. Talen Montana admits that Plaintiffs have selectively quoted from Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 62.

63. Talen Montana lacks sufficient knowledge or information to form a belief about the truth of the allegations in Plaintiffs' paragraph 63, and therefore denies the allegations in Plaintiffs' paragraph 63.

64. Talen Montana denies the allegations in Plaintiffs' paragraph 64.

65. Talen Montana admits that Plaintiffs have selectively quoted from Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 65.

66. Talen Montana admits that Plaintiffs have selectively quoted from Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 66.

67. Talen Montana admits that Plaintiffs have selectively quoted from Senate Bill 266. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 67.

68. Talen Montana denies the allegations in Plaintiffs' paragraph 68, except Talen Montana admits that Plaintiffs appear to have selectively quoted from the hearings on Senate Bill 266.

69. Talen Montana admits that Plaintiffs have quoted a statement by Montana's governor. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 69.

70. Talen Montana denies the allegations in Plaintiffs' paragraph 70.

Arbitration Agreement

71. Talen Montana denies the allegations in Plaintiffs' paragraph 71.

72. Talen Montana admits the allegations in Plaintiffs' paragraph 72.

73. Talen Montana admits that, subject to reservations of rights, it made proposals on March 29 and April 3 regarding the number of arbitrators, the venue for the arbitration, and the procedures the parties might follow during an arbitration. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 73.

74. Talen Montana denies the allegations in Plaintiffs' paragraph 74.

75. Talen Montana admits the allegations in Plaintiffs' paragraph 75.

76. Talen Montana admits that on May 4, 2021, it filed a complaint in Montana District Court for Yellowstone County that Plaintiffs are attempting to remove and have litigated in federal court. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 76.

Senate Bill 265

77. Talen Montana admits the allegations in Plaintiffs' paragraph 77.

78. Talen Montana admits the allegations in Plaintiffs' paragraph 78.

79. Talen Montana admits that Plaintiffs have selectively quoted from Senate Bill 265. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 79.

80. Talen Montana admits that Section 18 of the O&O Agreement does not contain a valid venue provision. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 80.

81. Talen Montana denies the allegations in Plaintiffs' paragraph 81.

82. Talen Montana denies the allegations in Plaintiffs' paragraph 82.

83. Talen Montana lacks sufficient knowledge or information to form a belief about the truth of the allegations in Plaintiffs' paragraph 83, and therefore denies the allegations in Plaintiffs' paragraph 83.

First Claim for Relief

84. Paragraph 84 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana states that Section 18 of the O&O Agreement is invalid under Montana law.

85. Talen Montana denies the allegations in Plaintiffs' paragraph 85.

86. Talen Montana denies the allegations in Plaintiffs' paragraph 86.

87. Talen Montana denies the allegations in Plaintiffs' paragraph 87.

88. Talen Montana denies the allegations in Plaintiffs' paragraph 88.

89. Talen Montana denies the allegations in Plaintiffs' paragraph 89.

90. Talen Montana denies the allegations in Plaintiffs' paragraph 90.

91. Talen Montana denies the allegations in Plaintiffs' paragraph 91.

92. Talen Montana denies the allegations in Plaintiffs' paragraph 92.

93. Talen Montana denies the allegations in Plaintiffs' paragraph 93.

94. Talen Montana denies the allegations in Plaintiffs' paragraph 94.

95. Talen Montana denies the allegations in Plaintiffs' paragraph 95.

96. Talen Montana denies the allegations in Plaintiffs' paragraph 96.

Second Claim for Relief

97. Talen Montana incorporates its responses to paragraphs 1-96.

98. Talen Montana admits that Plaintiffs have selectively quoted from the Constitution of the State of Montana. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 98.

99. Plaintiffs' paragraph 99 is unintelligible. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 99.

100. Talen Montana denies the allegations in Plaintiffs' paragraph 100.

101. Talen Montana denies the allegations in Plaintiffs' paragraph 101.

102. Talen Montana denies the allegations in Plaintiffs' paragraph 102.

103. Talen Montana denies the allegations in Plaintiffs' paragraph 103.

104. Talen Montana denies the allegations in Plaintiffs' paragraph 104.

Third Claim for Relief

105. Talen Montana incorporates its responses to paragraphs 1-104.

106. Talen Montana admits that Plaintiffs have selectively quoted from the Federal Arbitration Act. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 106.

107. Paragraph 107 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 107.

108. Paragraph 108 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 108.

109. Talen Montana admits that Plaintiffs have offered an altered and selectively quoted portion of the United States Supreme Court's opinion in *AT&T Mobility*. The remaining portions of Plaintiffs' paragraph 109 state legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 109.

110. Plaintiffs' paragraph 110 is unintelligible. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 110.

111. Talen Montana admits that Section 18 of the O&O Agreement does not contain a valid venue provision. The remaining portions of Plaintiffs' paragraph 111 state legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 111.

112. Talen Montana denies the allegations in Plaintiffs' paragraph 112.

113. Talen Montana denies the allegations in Plaintiffs' paragraph 113.

114. Talen Montana denies the allegations in Plaintiffs' paragraph 114.

Fourth Claim for Relief

115. Talen Montana incorporates its responses to paragraphs 1-114.

116. Talen Montana admits that Plaintiffs have selectively quoted from the United States Constitution. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 116.

117. Talen Montana admits that Plaintiffs have selectively quoted from opinions by the United States Supreme Court. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 117.

118. Talen Montana admits that Plaintiffs have selectively quoted from opinions by the United States Supreme Court. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 118.

119. Talen Montana admits that Colstrip is important to the future of energy in Montana and that Plaintiffs have provided an altered quotation of a statement made by Montana's governor. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 119.

120. Talen Montana denies the allegations in Plaintiffs' paragraph 120.

121. Paragraph 121 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 121.

122. Paragraph 122 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 122.

123. Talen Montana denies the allegations in Plaintiffs' paragraph 123.

124. Talen Montana denies the allegations in Plaintiffs' paragraph 124.

125. Talen Montana denies the allegations in Plaintiffs' paragraph 125.

126. Talen Montana denies the allegations in Plaintiffs' paragraph 126.

Fifth Claim for Relief

127. Paragraph 127 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 127.

128. Talen Montana denies the allegations in Plaintiffs' paragraph 128.

129. Talen Montana admits that the co-owners cannot unreasonably withhold their approval of the operator's proposed budget for Colstrip. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 129.

130. Talen Montana denies the allegations in Plaintiffs' paragraph 130.

131. Talen Montana denies the allegations in Plaintiffs' paragraph 131.

132. Talen Montana denies the allegations in Plaintiffs' paragraph 132.

133. Talen Montana denies the allegations in Plaintiffs' paragraph 133.

134. Talen Montana denies the allegations in Plaintiffs' paragraph 134.

135. Talen Montana admits that the O&O Agreement contains provisions that address the budgeting process. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 135.

136. Talen Montana denies the allegations in Plaintiffs' paragraph 136.

137. Talen Montana denies the allegations in Plaintiffs' paragraph 137.

138. Talen Montana denies the allegations in Plaintiffs' paragraph 138, which do not fully and accurately describe the O&O Agreement's requirements to close Units 3 and 4.

139. Talen Montana denies the allegations in Plaintiffs' paragraph 139.

140. Talen Montana denies the allegations in Plaintiffs' paragraph 140.

141. Talen Montana denies the allegations in Plaintiffs' paragraph 141.

142. Plaintiffs' paragraph 142 is unintelligible. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 142.

143. Talen Montana denies the allegations in Plaintiffs' paragraph 143.

144. Talen Montana denies the allegations in Plaintiffs' paragraph 144.

145. Talen Montana denies the allegations in Plaintiffs' paragraph 145.

Sixth Claim for Relief

146. Talen Montana incorporates its responses to paragraphs 1-145.

147. Talen Montana admits that Plaintiffs have selectively quoted from the United States Constitution. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 147.

148. Talen Montana admits that Plaintiffs have selectively quoted from the United States Supreme Court's opinion in *Grayned*. Talen Montana denies the remaining allegations in Plaintiffs' paragraph 148.

149. Talen Montana denies the allegations in Plaintiffs' paragraph 149.

150. Paragraph 150 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 150.

151. Paragraph 151 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 151.

152. Paragraph 152 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 152.

153. Paragraph 153 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 153.

154. Paragraph 154 states legal conclusions to which no response is required. To the extent a response is required, Talen Montana denies the allegations in Plaintiffs' paragraph 154.

155. Talen Montana denies the allegations in Plaintiffs' paragraph 155.

156. Talen Montana denies the allegations in Plaintiffs' paragraph 156.

157. Talen Montana denies the allegations in Plaintiffs' paragraph 157.

Prayer for Relief

Talen Montana denies that Plaintiffs are entitled to any relief in this action.

Affirmative Defenses

Since the 1980s, the people of the State of Montana have relied on Colstrip for jobs, power, and prosperity. This lawsuit is part of Plaintiffs' effort to bring that to an end by forcing Colstrip to close prematurely. Plaintiffs challenge the constitutionality of two recently enacted Montana statutes that they believe stand in their way. This Court need not, and therefore should not, resolve the constitutionality of either statute. One, SB 266, is enforceable solely by the Montana attorney general and he has never suggested that enforcement proceedings were forthcoming. The second, SB 265, addresses the venue for certain arbitrations involving electric plants like Colstrip. But Colstrip's co-owners are currently negotiating the appropriate venue and procedures for any arbitration regarding Colstrip's future and there is, thus, no reason for this Court to weigh in at this time.

Because there is no justiciable dispute for this Court to resolve, and in light of the other reasons why Talen Montana is entitled to judgment in its favor, Talen Montana asserts the following defenses to Plaintiffs' Complaint. By asserting

these defenses, Talen Montana does not concede, and reserves its right to dispute, that the defenses are affirmative defenses for which Talen Montana bears the burden of proof. Talen Montana also reserves the right to supplement or amend these defenses as discovery proceeds.

First Affirmative Defense: Failure to State a Claim

Plaintiffs fail to state a claim against Talen Montana upon which relief can be granted.

Second Affirmative Defense: Justiciability

Plaintiffs' declaratory judgment claims fail to present a justiciable controversy between the parties.

Third Affirmative Defense: Lack of Standing

Plaintiffs lack standing to pursue these claims.

Fourth Affirmative Defense: Unclean Hands

Plaintiffs' claims are barred by their unclean hands.

Fifth Affirmative Defense: Ripeness

Plaintiffs' claims are unripe.

Sixth Affirmative Defense: Jurisdiction

This Court lacks jurisdiction over the subject matter of this dispute.

Seventh Affirmative Defense: Abstention

This Court should abstain from deciding some or all of the issues in the Complaint.

Eighth Affirmative Defense: Conditions Precedent

Plaintiffs have failed to perform conditions precedent.

Ninth Affirmative Defense: Duplicity

Plaintiffs have elected to seek arbitration of some or all of the Complaint's subject matter.

Prayer for Relief

Defendant Talen Montana prays for an Order:

- A. Dismissing the Complaint with prejudice;
- B. Awarding Talen Montana its costs, fees, and expenses as may be awardable at law or in equity; and
- C. Awarding Talen Montana such other and further relief that the Court deems just, equitable, and proper.

Respectfully submitted,

Dated: June 17, 2021

/s/ Robert L. Sterup
Robert L. Sterup
Brown Law Firm, PC
315 North 24th Street
Billings, Montana 59101
Telephone: (406) 248-2611
Facsimile: (406) 248-3128

rsterup@brownfirm.com

Barry Barnett (*pro hac vice*
application forthcoming)
Adam Carlis (*pro hac vice*
application forthcoming)
Susman Godfrey L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
bbarnett@susmangodfrey.com
acarlis@susmangodfrey.com

Alexander P. Frawley (*pro hac*
vice application forthcoming)
Susman Godfrey L.L.P.
1301 Avenue of the Americas,
32 Fl New York, New York
10019-6023
Tel.: (212) 336-8330
Fax: (212) 336-8340
afrawley@susmangodfrey.com

Attorneys for Defendant Talen
Montana, LLC