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COUNSEL FOR DEFENDANT
AUSTIN KNUDSEN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

<p>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.</p>	<p>CV-21-47-SPW-KLD ANSWER OF DEFENDANT AUSTIN KNUDSEN</p>
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INTRODUCTION

1–17. Paragraphs 1 through 17 constitute Plaintiffs’ introductory characterizations of the case, to which no response is required. Additionally, Paragraphs 2 through 6 and 8 through 11 contain legal conclusions for which no response is required. The statutes cited speak for themselves and must be read in their entirety. The statements referenced in Paragraph 7 and the O&O Agreement speak for themselves are the best evidence of their contents. Paragraphs 11 through 15 pertain to Senate Bill (SB) 265, and Defendant is not named with respect to constitutional challenges to that bill; therefore, no response is required. To the extent additional response is required, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and affirmatively denies that the challenged provisions violate rights protected by the Montana Constitution and affirmatively denies that all of Plaintiffs’ claims are ripe for dispute.

PARTIES

18–23. Defendant lacks information or knowledge sufficient to form a truth as to the allegations.

24. Defendant admits Austin Knudsen is the Attorney General of Montana. The remaining allegations in Paragraph 24 are legal conclusions for which no response is required.

VENUE AND JURISDICTION

25. Defendant admits Colstrip Units 3 and 4 are located in Rosebud County, Montana. The remaining allegations in Paragraph 25 are legal conclusions for which no response is required.

26–27. The allegations in Paragraphs 26 and 27 are legal conclusions for which no response is required.

FACTUAL ALLEGATIONS

The O&O Agreement

28. Defendant 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.” Defendant lacks information or knowledge sufficient to respond to the remaining allegations in Plaintiffs’ Paragraph 28.

29. Defendant admits the allegations in Paragraph 29.

30. Defendant 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. Defendant lacks information or knowledge sufficient to respond to the remaining allegations in Paragraph 30, some of which also may contain legal conclusions for which no response is required.

31. The allegations in Paragraph 31 are legal conclusions for which no response is required, and the O&O Agreement speaks for itself and is the best evidence of its contents.

32. Defendant admits the allegations in Paragraph 32.

33. Defendant admits that Talen Montana and NorthWestern have entered into a vote sharing agreement. Defendant lacks information or knowledge sufficient to respond to the remaining allegations in Plaintiffs' paragraph 33.

34–38. The allegations in these paragraphs are legal conclusions for which no response is required, and the O&O Agreement speaks for itself and is the best evidence of its contents.

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

39. Defendant admits the allegations in Paragraph 39.

40–42. The allegations in Paragraphs 40 through 42 contain legal conclusions for which no response is required. To the extent a response is required, the statutes referenced speak for themselves.

43. Defendant admits that electricity supply resource procurement is complex and costly and requires utilities to have sufficient generation for their customer load. Defendant lacks information or knowledge sufficient to respond to the remaining allegations in Paragraph 43. Argumentative assertions contained in Paragraph 43 are denied.

44. Defendant admits that Talen is an independent power producer. Defendant lacks information or knowledge sufficient to respond to the remaining allegations in the first sentence of Paragraph 44. The allegations in the second sentence of Paragraph 44 appear to characterize legislative testimony, which speaks for itself and is the best evidence of its contents.

45. Defendant admits that NorthWestern is a public utility. The remaining allegations in the first sentence of Paragraph 45 state a legal conclusion for which no response is required. The allegations in the second sentence of Paragraph 44 appear to characterize NorthWestern's

statements, which speak for themselves and are the best evidence of their contents.

46. Defendant lacks information or knowledge sufficient to respond to the allegations in Paragraph 46.

Colstrip Owners' Pending Arbitration

47–55. Defendant lacks information or knowledge sufficient to respond to the allegations in these paragraphs, many of which appear to also be legal conclusions for which no response is required. To the extent documents, including the O&O Agreement, are referenced, those documents speak for themselves and are the best evidence of their contents.

Senate Bill 266

56. Defendant admits the Montana legislature considered Senate Bill 266, and both Talen and Northwestern testified in support of the bill. Defendant lacks sufficient information or knowledge to respond to the remaining allegations in the first sentence of Paragraph 56. The second sentence of Paragraph 56 states a legal conclusion for which no response is required and cites a portion of SB 266, which speaks for itself and which must be read in its entirety, as well as the

O&O Agreement, which speaks for itself and is the best evidence of its contents.

57. Defendant lacks sufficient information or knowledge to respond to the first and third sentences of Paragraph 57. Defendant admits the second sentence.

58. Defendant admits that what appears to be SB 266 is attached to the Complaint as Exhibit A.

59. The allegations in Paragraph 59 appear to characterize legislative testimony, which speaks for itself and is the best evidence of its contents. To the extent this paragraph contains legal conclusions with respect to Plaintiffs' contractual rights, no response is required.

60. Defendant lacks information or knowledge sufficient to respond to the first sentence in Paragraph 60. Defendant admits the Montana Senate passed SB 266 on February 27, 2021, and that the Governor signed SB 266 into law on May 3, 2021. Defendant denies that the Montana House passed SB 266 on April 23, 2021. The third of sentence of Paragraph 60 is a legal conclusion for which no response is required.

61–67. Paragraphs 61 through 67 state legal conclusions for which no response is required. Additionally, the SB 266 and the O&O Agreement are the best evidence of their contents and must be read in their entirety.

68. The allegations in this paragraph refer to committee hearings, which are recorded and the best evidence of their contents. To the extent Plaintiffs attempt to characterize these statements, Defendant denies they say anything other than what the hearing record shows.

69. The allegations in this paragraph refer to a statement made by Montana’s governor, which is the best evidence of its contents, and Defendant denies it says anything other than what is contained therein.

70. The allegations in this paragraph are legal conclusions for which no response is required.

Arbitration Agreement

71–73. Defendant lacks information or knowledge specific to respond to the allegations in these paragraphs. Additionally, the O&O Agreement speaks for itself and is the best evidence of its contents.

74. The allegations in this paragraph are legal conclusions for which no response is required, and the O&O Agreement speaks for itself and is the best evidence of its contents.

75. Defendant lacks information or knowledge sufficient to respond to the allegations in this paragraph.

76. Defendant admits the first sentence of Paragraph 76. Talen's complaint speaks for itself. Defendant admits the third sentence.

Senate Bill 265

77–83. The allegations in Paragraphs 77 through 83 pertain to SB 265 and, therefore, do not pertain to Defendant, as Plaintiffs have not named Defendant in their constitutional challenge to SB 265. Therefore, no response is required.

FIRST CLAIM FOR RELIEF

84–96. The allegations in Paragraphs 84 through 96 do not pertain to Defendant and, therefore, no response is required.

SECOND CLAIM FOR RELIEF

97–104. The allegations in Paragraphs 97 through 104 do not pertain to Defendant and, therefore, no response is required.

THIRD CLAIM FOR RELIEF

105–114. The allegations in Paragraphs 105 through 114 do not pertain to Defendant and, therefore, no response is required.

FOURTH CLAIM FOR RELIEF

115. Defendant realleges and incorporates by reference his responses to Paragraphs 1 through 114.

116–118. The allegations in Paragraphs 116 through 118 are legal conclusions for which no response is required. To the extent a response is required, Defendant affirmatively denies that SB 266 violates the commerce clause.

119. The first sentence of Paragraph 119 is a legal conclusion for which no response is required. The remaining allegations pertain to statements made by certain individuals; those statements speak for themselves, should be read in their entirety, and Defendant denies they state anything other than what is contained therein.

120. The allegations in Paragraph 120 are legal conclusions for which no response is required. To the extent a response is required, deny.

121. The allegations in Paragraph 121 are legal conclusions for which no response is required. To the extent a response is required, deny that SB 266 violates the Commerce Clause.

122. The allegations in Paragraph 122 state a legal conclusion for which no response is required.

123. Defendant denies the first sentence. The second sentence contains a legal conclusion for which no response is required; to the extent facts are alleged, deny. Defendant denies the third sentence. The fourth sentence is a legal conclusion for which no response is required, and the O&O Agreement speaks for itself.

124–126. The allegations in Paragraphs 124 through 126 are legal conclusions for which no response is required. To the extent a response is required, deny.

FIFTH CLAIM FOR RELIEF

127. Paragraph 127 states a legal conclusion for which no response is required.

128. Paragraph 128 states a legal conclusion for which no response is required. To the extent a response is required, deny.

129. The allegations in Paragraph 129 characterize the O&O Agreement, which speaks for itself and is the best evidence of its contents, and Defendant denies it states anything other than what is contained therein.

130–131. The allegations in Paragraphs 130 through 131 state legal conclusions for which no response is required. Additionally, SB 266 speaks for itself and must be read in its entirety. To the extent a response is required, deny.

132. The allegations in this paragraph characterize the O&O Agreement, which speaks for itself and is the best evidence of its contents, and Defendant denies it states anything other than what is contained therein.

133–134. The allegations in Paragraphs 133 through 134 state legal conclusions for which no response is required. Additionally, SB 266 speaks for itself and must be read in its entirety. To the extent a response is required, deny.

135. The allegations in this paragraph characterize the O&O Agreement, which speaks for itself and is the best evidence of its

contents, and Defendant denies it states anything other than what is contained therein.

136–137. The allegations in Paragraphs 136 through 137 state legal conclusions for which no response is required. Additionally, SB 266 speaks for itself and must be read in its entirety. To the extent a response is required, deny.

138. The allegations in this paragraph characterize the O&O Agreement, which speaks for itself and is the best evidence of its contents, and Defendant denies it states anything other than what is contained therein.

139–140. The allegations in Paragraphs 139 through 140 state legal conclusions for which no response is required. Additionally, SB 266 speaks for itself and must be read in its entirety. To the extent a response is required, deny.

141. The allegations in this paragraph characterize the O&O Agreement, which speaks for itself and is the best evidence of its contents, and Defendant denies it states anything other than what is contained therein.

142. The allegations in Paragraph 142 are hypothetical and state legal conclusions for which no response is required. Additionally, they characterize the O&O Agreement and SB 266, which speak for themselves and are the best evidence of its contents. To the extent a response is required, deny.

143–145. The allegations in these paragraphs are legal conclusions for which no response is required. To the extent a response is required, deny.

SIXTH CLAIM FOR RELIEF

146. Defendant realleges and incorporates by reference his responses to paragraphs 1–145.

147–148. Paragraphs 147 and 148 state legal conclusions for which no response is required.

149–157. Paragraphs 149 through 157 state legal conclusions for which no response is required. To the extent a response is required, deny.

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

2. Defendant did not subject Plaintiffs, or cause Plaintiffs to be subjected, to any violation of rights secured by the United States Constitution.

3. Defendant is not a "person" subject to suit under 42 U.S.C. § 1983.

4. Defendant cannot be sued for retroactive injunctive relief under 42 U.S.C. § 1983.

5. Plaintiffs lack standing to assert the causes of action and claims of which they complain.

6. The issues raised in Plaintiffs' complaint are not ripe for judicial resolution.

7. Plaintiffs' causes of action and claims are not justiciable.

8. This Court should abstain from hearing this matter under federal abstention doctrines.

9. Plaintiffs' claims and causes of action are barred by the doctrine of unclean hands.

10. Defendant reserves the right to amend this Answer to allege new and additional defenses as they might arise or become known through discovery or further investigation.

PRAYER FOR RELIEF

Based on these answers and affirmative defenses, Defendant respectfully requests that the Court enter judgment as follows:

- (a) Dismissing the Complaint with prejudice;
- (b) Denying Plaintiffs' request for declaratory, injunctive, attorney fees, and other relief;
- (c) Awarding Defendant's litigation costs and reasonable attorney fees as the prevailing party as provided in 42 U.S.C. § 1988 and *Thomas v. City of Tacoma*, 410 F.3d 644, 647 (9th Cir. 2005); and

- (d) Awarding such further relief as the Court may find to be just and equitable.

DATED this 22nd day of June, 2021.

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By: /s/ Aislinn W. Brown
AISLINN W. BROWN
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the clerk of the court for the United States District Court for the District of Montana, using cm/ecf system.

Participants in the case who are registered cm/ecf users will be served by the cm/ecf system.

Dated: June 22, 2021

/s/ Aislinn W. Brown
AISLINN W. BROWN
Assistant Attorney General