

Charles E. Hansberry  
Jenny M. Jourdonnais  
HANSBERRY & JOURDONNAIS, PLLC  
2315 McDonald Avenue, Suite 210  
Missoula, MT 59801  
chuck@hjbusinesslaw.com  
jenny@hjbusinesslaw.com  
Phone: 406-203-1730  
Fax: 406-205-3170

*Attorneys for Plaintiffs*  
[additional counsel on signature page]

**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-BLG-  
SPW-KLD

**PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT REGARDING  
THEIR FOURTH AND FIFTH  
CLAIMS FOR RELIEF**

**L.R. 7.1(C)(1) STATEMENT**

Plaintiffs have contacted counsel for defendants. Attorney General Knudsen and Talen Montana, LLC oppose the motion. NorthWestern Corporation reserves taking a position until it reviews the Motion and Brief in Support.

**Page 1 - PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
REGARDING THEIR FOURTH AND FIFTH CLAIMS FOR  
RELIEF**

## MOTION

Pursuant to Federal Rule of Civil Procedure 56, plaintiffs Portland General Electric Company, Avista Corporation, PacifiCorp, and Puget Sound Energy, Inc. respectfully move this Court to grant summary judgment in their favor on their Fourth and Fifth Claims for Relief. Specifically, plaintiffs are entitled to judgment in their favor and awarding them the relief sought: permanent injunctions, as stated below, against the Montana Attorney General, in his official capacity, from enforcing, or seeking to enforce, Senate Bill 266 (2021) (codified as Montana Code Section 30-14-2702 within the Montana Unfair Trade Practices and Consumer Protection Act) and impairing plaintiffs' rights protected by the Commerce Clause and the Contract Clause of the United States Constitution, and declarations that Senate Bill 266, as applied to the Ownership and Operation Agreement, violates those two clauses of the Constitution.

Plaintiffs move this Court to enter a permanent injunction order against defendant Austin Knudsen, in his official capacity as the Montana Attorney General, as follows:

- 1) The order shall permanently enjoin enforcement of all of Montana Senate Bill 266 against plaintiffs concerning Colstrip, including taking any steps to commence civil actions to enforce compliance with Senate Bill 266; to seek

temporary, preliminary, or permanent injunctive relief as provided in Senate Bill 266; or to seek civil fines as provided in Senate Bill 266.

2) Pursuant to Rule 65(d)(2)(A)-(C), the permanent injunction shall also bind all Assistant Attorneys General and any other officers, agents, or other persons who are in active concert or participation with Defendant Knudsen.

3) The conduct enjoined shall pertain to purported violations of the Act that arise out of conduct or actions taken by plaintiffs on or after January 1, 2021, including future conduct or actions taken by plaintiffs after entry of the Order.

This motion is supported by the concurrently-filed Brief in Support of Motion for Partial Summary Judgment, by the concurrently-filed Statement of Undisputed Facts and Index of Exhibits, by the previously-filed declarations of Ronald J. Roberts (Doc. 39-2), Jason R. Thackston (Doc. 39-3), Brett Greene (Docs. 39-4 and 88-1), Mike Johanson (Doc. 39-5), and Jeffrey M. Hanson

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(Doc. 39-6), by the concurrently-filed new declarations of Mr. Greene and Mr. Roberts, and by the record in this matter.

Dated this 29th day of October 2021.

MARKOWITZ HERBOLD PC

*s/ Dallas DeLuca*

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Dallas DeLuca

(Admitted Pro Hac Vice)

David B. Markowitz

(Admitted Pro Hac Vice)

Harry B. Wilson

(Admitted Pro Hac Vice)

DallasDeLuca@MarkowitzHerbold.com

DavidMarkowitz@MarkowitzHerbold.com

HarryWilson@MarkowitzHerbold.com

MARKOWITZ HERBOLD PC

1455 SW Broadway, Suite 1900

Portland, OR 97201

Ph: (503) 295-3085

Fax: (503) 323-9105

*Attorneys for Plaintiff Portland General Electric  
Company*

HANSBERRY & JOURDONNAIS, PLLC

Charles E. Hansberry

Jenny M. Jourdonnais

Charles E. Hansberry

Jenny M. Jourdonnais

chuck@hjbusinesslaw.com

jenny@hjbusinesslaw.com

HANSBERRY & JOURDONNAIS, PLLC

2315 McDonald Avenue

Suite 210

Missoula, MT 59801

406-203-1730

Fax: 406-205-3170

*Attorneys for Plaintiffs*

Gary M. Zadick  
gmz@uazh.com  
UGRIN ALEXANDER ZADICK, P.C.  
#2 Railroad Square, Suite B  
PO Box 1746  
Great Falls, MT 59403  
Ph: (406) 771-0007  
Fax: (406) 452-9360  
Attorneys for Plaintiff Portland General  
Electric Company

PERKINS COIE LLP  
Harry H. Schneider, Jr.  
(Admitted Pro Hac Vice)  
Jeffrey M. Hanson  
(Admitted Pro Hac Vice)  
Gregory F. Miller  
(Admitted Pro Hac Vice)  
HSchneider@perkinscoie.com  
JHanson@perkinscoie.com  
GMiller@perkinscoie.com  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
Ph: (206) 359-8000  
Fax: (206) 359-9000  
*Attorneys for Plaintiff Puget Sound Energy,  
Inc.*

KSB LITIGATION P.S.  
William J. Schroeder  
(Admitted Pro Hac Vice)  
William.schroeder@Ksblit.legal  
510 W Riverside, Suite 300  
Spokane, WA 99201  
Ph: (509) 624-8988  
Fax: (509) 474-0358  
*Attorneys for Plaintiff Avista Corporation*

AVISTA CORPORATION

Michael G. Andrea

(Admitted Pro Hac Vice)

Michael.Andrea@avistacorp.com

1411 W. Mission Ave.—MSC-17

Spokane, WA 99202

Ph: (509) 495-2564

Fax: (509) 777-5468

*Attorney for Plaintiff Avista Corporation*

SCHWABE WILLIAMSON & WYATT

Troy Greenfield

Connie Sue Martin

(Admitted Pro Hac Vice)

TGreenfield@Schwabe.com

CSMartin@Schwabe.com

US Bank Centre

1420 Fifth Avenue, Suite 3400

Seattle, WA 98101

Ph: (206) 407-1581

Fax: (206) 292-0460

*Attorneys for Plaintiff PacifiCorp*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2021, a copy of the foregoing document was served on the following persons, via ECF:

Charles E. Hansberry  
Jenny M. Jourdonnais  
HANSBERRY & JOURDONNAIS, PLLC  
2315 McDonald Avenue, Suite 210  
Missoula, MT 59801

*Attorneys for Plaintiffs*

Gary M. Zadick  
UGRIN ALEXANDER ZADICK & HIGGINS  
PO Box 1746  
Great Falls, MT 59403-1746

*Attorneys for Plaintiff Portland General Electric Company*

Michael G. Andrea  
AVISTA CORPORATION  
1411 W. Mission Ave., MSC-17  
Spokane, WA 99202

William J. Schroeder  
KSB LITIGATION, P.S.  
510 W. Riverside Ave., #300  
Spokane, WA 99201

*Attorneys for Avista Corporation*

Connie Sue Martin  
Troy D. Greenfield  
SCHWABE WILLIAMSON & WYATT  
1420 5th Ave., Suite 3400  
Seattle, WA 98101

*Attorneys for PacifiCorp*

Jeffrey M. Hanson  
Gregory F. Miller  
Harry H. Schneider  
PERKINS COIE  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099

*Attorneys for Puget Sound Energy, Inc.*

J. David Jackson  
DORSEY & WHITNEY  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498

Stephen D. Bell  
DORSEY & WHITNEY LLP  
125 Bank Street, Millennium Building, Suite 600  
Missoula, MT 59802-4407

*Attorneys for NorthWestern Corporation*

Adam Carlis  
Barry Barnett  
SUSMAN GODFREY LLP  
1000 Louisiana Street  
Suite 5100  
Houston, TX 77002-5096

Alexander P. Frawley  
SUSMAN GODFREY LLP  
1301 Avenue of the Americas  
32nd Floor  
New York, NY 10019

Robert L Sterup  
BROWN LAW FIRM, P.C.  
315 North 24th Street  
Billings, Montana 59101  
*Attorneys for Defendant Talen Montana, LLC*

Aislinn W. Brown  
MONTANA DEPARTMENT OF JUSTICE  
PO Box 201440  
Helena, MT 59620-1440

Derek J. Oestreicher  
MONTANA ATTORNEY GENERAL  
215 N Sanders  
PO Box 201401  
Helena, MT 59620-1401

Jeremiah R. Langston  
MONTANA ATTORNEY GENERAL  
PO Box 201401  
215 North Sanders  
Helena, MT 59620-1401

*Attorneys for Defendant Austin Knudsen, in his official capacity as Attorney  
General for the State of Montana*

Dated this 29<sup>th</sup> day of October, 2021.

MARKOWITZ HERBOLD PC

By: s/ Dallas DeLuca  
Dallas DeLuca (admitted *pro hac vice*)

*Attorneys for Plaintiff Portland General  
Electric Company*