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**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

**PLAINTIFFS' BRIEF IN SUPPORT
OF MOTION FOR ENTRY OF AN
ORDER FURTHER DEFINING
TERMS AND SCOPE OF
PRELIMINARY INJUNCTION
ISSUED OCTOBER 13, 2021**

BRIEF IN SUPPORT OF MOTION FOR ORDER
FURTHER DEFINING TERMS AND SCOPE OF
PRELIMINARY INJUNCTION

INTRODUCTION

On October 13, 2021, this Court granted a Motion for Preliminary Injunction filed by Plaintiffs Portland General Electric Company, Avista Corporation, PacifiCorp, and Puget Sound Energy, Inc. (collectively the “PNW Owners”). (Doc. 100.) The PNW Owners’ Motion, filed on May 27, 2021 (Doc. 37), sought a preliminary injunction to prevent Attorney General Austin Knudsen from enforcing Senate Bill 266 (2021 Montana Laws Ch. 377, codified at Montana Code Title 30, Chapter 14, Part 27) against Plaintiffs.

Out of an abundance of caution and to ensure technical compliance with Federal Rule of Civil Procedure 65(d)(1), the PNW Owners move for entry of an order further defining the terms and scope of the preliminary injunction. They provided a draft proposed order for Defendants’ review, informed Defendants that the PNW Owners intended to request an order that conforms to the relief sought in the motion and granted by the Court, and invited Defendants to identify any substantive concerns with the proposed order so the parties could try to resolve them. Neither the Attorney General nor Talen Montana, LLC (“Talen”) identified any substantive objection, yet both oppose this Motion. Counsel for the Attorney General responded that “[t]he basis for the objection is the relief you seek has already been granted.” Talen simply responded that it opposes the Motion.

NorthWestern states that it will review the motion papers before deciding whether it will oppose the Motion.

In conformity with Federal Rule of Civil Procedure 65(d)(1), the Court should grant the Motion and issue the requested Order to further define the terms and scope of the October 13 preliminary injunction.

DISCUSSION

The PNW Owners’ Motion for Preliminary Injunction asked the Court to enter a preliminary injunction against Defendant Knudsen, in his official capacity as Montana Attorney General, “[e]njoining enforcement of all of SB [Senate Bill] 266 against plaintiffs concerning Colstrip because SB 266 violates the Contract Clause of the United States Constitution. . . . [and] the Commerce Clause of the United States Constitution.” (Doc. 37, at 2–3.) The Court’s October 13 Order included findings of fact and conclusions of law providing the reasons why the requirements for a preliminary injunction were met with respect to the PNW Owners’ Contract Clause and Commerce Clause claims. (Doc. 100, at 2–15.) The Court “ORDERED that Plaintiff PNW Owners’ Motion for a Preliminary Injunction (Doc. 37) is GRANTED.” (Doc. 100, at 15.)

The PNW Owners request entry of an order precisely defining the terms and scope of the preliminary injunction, pursuant to Federal Rule of Civil Procedure 65(d)(1), which provides as follows:

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(d) Contents and Scope of Every Injunction and Restraining Order.

(1) *Contents*. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

Consistent with the relief sought by the PNW Owners and granted by the Court, and to ensure technical compliance with Rule 65(d)(1), the PNW Owners seek entry of an order setting forth the specific terms of the preliminary injunction, the acts restrained, and its temporal effect. Specifically, the PNW Owners request an order with the following components:

1. Defendant Austin Knudsen, in his official capacity as the Attorney General of the State of Montana, is enjoined from enforcing Montana Code Annotated Title 30, Chapter 14, Part 27 (2021 Montana Laws Ch. 377; Senate Bill 266) (“the Act”) against the PNW Owners concerning the coal-fired electrical generation units in Colstrip, Montana, including taking any steps to commence civil actions under the Act to enforce compliance with the Act; to seek temporary, preliminary, or permanent injunctive relief as provided in the Act; or to seek civil fines as provided in the Act.
2. The conduct enjoined as described in paragraph 1 shall pertain to purported violations of the Act that arise out of conduct or actions taken by any PNW Owners on or after January 1, 2021, including future conduct or actions taken by any PNW Owners after entry of the Order.

3. The Order shall remain in full force and effect pending further order by the Court or entry of final judgment in this action.

Even though the terms and scope of the requested Order conform to the relief requested by the PNW Owners in their Motion for Preliminary Injunction that was granted by the Court, the Attorney General and Talen oppose the current Motion. Declaration of Jeffrey M. Hanson (“Hanson Decl.”), Ex. A. Counsel for the Attorney General wrote that the requested Order is “improper to the extent you seek further relief beyond the scope of your original motion.” *Id.* The PNW Owners responded as follows: “On the substantive objection, can you let us know what you consider beyond the scope of our original motion to see if we can resolve that concern? It is not our intent to seek additional relief, and we don’t view this as another Rule 65 motion.” *Id.* Counsel for the Attorney General responded but did not identify any substantive objection, and in fact implicitly confirmed that the requested relief is consistent with the Court’s Order. *Id.* (“The basis for the objection is *the relief you seek has already been granted*, and I don’t see a basis under Rule 65 to submit a proposed order after relief has already been granted.”) (emphasis added). Talen simply responded that it opposes the Motion, without

identifying any substantive objection. *Id.*¹ NorthWestern is not taking a position on the Motion until it reviews the motion papers. *Id.*

The PNW Owners respectfully ask the Court to enter the requested Order regarding the preliminary injunction to “state its terms specifically” and “describe in reasonable detail . . . the act or acts restrained.” *See* Fed. R. Civ. P. 65(d)(1)(B), (C). There is nothing procedurally improper about the Motion. The requested Order would not provide different or additional relief than what was sought by the PNW Owners and granted by the Court in its October 13 Order. Instead, the requested Order would simply further define the scope and terms of the preliminary injunction by stating its terms specifically and describing the acts restrained by tracking the relevant language in Section 30-14-2702(2)(a) and (b). The requested Order would also specify that the preliminary injunction pertains to purported violations of the Act that arise out of conduct or actions taken by any PNW Owners on or after January 1, 2021, because the Act purports to apply retroactively to actions taken on or after that date. 2021 Montana Laws Ch. 377 (S.B. 266), § 6.

¹ The PNW Owners asked counsel for Talen and NorthWestern, “If you have a substantive objection with the scope or terms of the requested order, please let us know so we can try to resolve any such concern.” Hanson Decl., Ex. A.

CONCLUSION

For the reasons above, the Court should grant the PNW Owners' Motion for Entry of an Order Further Defining Terms and Scope of Preliminary Injunction Issued October 13, 2021.

DATED this 4th day of November, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this Plaintiffs' Brief in Support of Motion for Order Further Defining Terms and Scope of Preliminary Injunction is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word, is 1,174 words long, excluding Caption, Certificate of Service, and Certificate of Compliance.

DATED this 4th day of November, 2021.

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