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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; and AUSTIN
KNUDSEN, in his official capacity as
Attorney General for the State of
Montana,**

Defendants.

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

**APPENDIX IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
ATTORNEY GENERAL
KNUDSEN'S MOTION TO STAY**

APPENDIX

APP.	DESCRIPTION
1.	Declaration of Dallas DeLuca, with Exhibits A–C A. NorthWestern’s Amended Arbitration Demand (excerpts), dated April 2, 2021 B. PGE counsel Dallas DeLuca’s email to Defendants’ counsel, dated November 17, 2021 C. Talen counsel Alex Frawley’s email to counsel, dated November 12, 2021

DATED this 3rd day of December, 2021.

/s/ Jeffrey M. Hanson

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**PORTLAND GENERAL ELECTRIC
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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

**DECLARATION OF
DALLAS DELUCA IN SUPPORT
OF PLAINTIFFS' OPPOSITION
TO ATTORNEY GENERAL
KNUDSEN'S MOTION FOR STAY**

I, Dallas DeLuca, make the following declaration pursuant to 28 U.S.C.

Sec. 1746 and under penalty of perjury:

**DECLARATION OF DALLAS DELUCA IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO ATTORNEY GENERAL KNUDSEN'S
MOTION FOR STAY**

Page 1

1. I am one of the attorneys representing defendant Portland General Electric Company (“PGE”), and I am competent to testify to the matters set forth in this declaration. I make these declarations in support of the plaintiffs’ opposition to Attorney General (“AG”) Knudsen’s Motion for Stay.

2. On November 24, 2021, at 9:00 a.m. Pacific Standard Time, I participated in and led the agenda for a Zoom video conference with lawyers from all seven parties in this case. Lawyers for plaintiffs Avista Corporation, Portland General Electric Company, PacifiCorp, and Puget Sound Energy Inc. and defendants NorthWestern Corporation, Talen Montana, LLC, and Austin Knudsen, in his official capacity as the Attorney General for the State of Montana, attended this video conference.

3. Prior to the conference, I emailed to all parties an agenda, which is attached as Exhibit B to this declaration.

4. Plaintiffs included in the agenda Talen Montana’s request to depose Brett Greene and Ronald Roberts, two individuals who had signed declarations in support of plaintiffs’ motion for partial summary judgment concerning Senate Bill 266 (“SB 266”) (Dkt. 102).

5. On November 12, 2021, Talen Montana emailed a request for (1) a two-week extension of the time to respond to the summary judgment motion, and

(2) for depositions of those two individuals. The email stated, in part, “Talen Montana would also like to depose Brett Greene and Ronald Roberts, whom Plaintiffs rely on for numerous factual assertions in their motion for partial summary judgment. These depositions will cover those factual assertions. Can Plaintiffs please let us know when they are available for a remote deposition? We will then send over notices.” That email is attached as Exhibit C to this declaration.

6. Brett Greene is an employee of Portland General Electric (“PGE”) and submitted a declaration in support of the motion for partial summary judgment (Dkt. 105).

7. Ronald Roberts is an employee of Puget Sound Energy (“PSE”) and submitted a declaration in support of the motion for partial summary judgment (Dkt. 106).

8. At the start of the November 24, 2021, Zoom conference with all parties, PGE and PSE informed Talen Montana that they would make Mr. Greene and Mr. Roberts available for the limited depositions that Talen Montana had requested.

9. After I stated that Mr. Greene and Mr. Roberts would be available for the limited depositions (*i.e.*, limited to just the statements in the declarations that

plaintiffs relied upon in the summary judgment motion regarding SB 266), Mr. Frawley, for Talen Montana, stated that Talen Montana was “tabling” its request for depositions of Mr. Greene and Mr. Roberts until after discovery. The Attorney General expressed no interest in accelerated depositions.

10. PGE and PSE had intended to offer Mr. Greene and Mr. Roberts for depositions on December 3 and December 7, respectively, but did not do so after Talen Montana stated that it was tabling its request for depositions. Plaintiffs were also prepared to offer Talen Montana and NorthWestern Energy an additional extension of time to respond to the summary judgment motion, to one week after the conclusion of the second deposition.

11. Plaintiffs’ responses to the Attorney General’s discovery requests are due December 10, 2021.

12. Talen Montana’s counsel stated that it did not need a further extension for its response to the summary judgment motion and that Talen Montana would respond on December 3, 2021. NorthWestern’s counsel also said no further extension was needed for NorthWestern’s response and that NorthWestern would respond on December 3, 2021.

13. The next topic we discussed was plaintiffs’ responses to the Attorney General’s discovery requests. I stated that plaintiffs would respond timely on

December 10, 2021, and that plaintiffs would object to some of the requests. I stated that plaintiffs would like to confer with the Attorney General about those objections after we serve the responses to the discovery requests.

14. Assistant Attorney General Aislinn Brown, lead attorney for the Attorney General, responded that she would be out of the office, without email access, between December 10 and December 31, and that no other member of the Attorney General's office was available during that period to confer on discovery objections or to participate in a Rule 26(f) conference. She also stated that Assistant Attorney General Jeremiah Langston would no longer be assigned to this case, effective the first week of December, and she did not know if or when another attorney would be assigned to this case.

15. All parties agreed to attend a Rule 26(f) discovery planning conference on December 9, 2021, and agreed to confer on plaintiffs' objections to the Attorney General's discovery requests before December 10, 2021.

16. The parties also discussed entering into a stipulated two-tier protective order for discovery. Defendants stated that they would need to review the proposed protective order, but did not state any objections in principle to entry of a stipulated two-tier protective order.

17. Attached as Exhibit A to this declaration is a true and correct copy of excerpts from NorthWestern Energy's Amended Arbitration Demand showing the claims asserted by NorthWestern. On December 3, 2021, the PNW Owners will produce to the Attorney General the parties' arbitration demands, responses to arbitration demands, and related correspondence.

I certify and attest that the foregoing statements made by me are true under penalty of perjury.

DATED this 3rd day of December, 2021.

s/ Dallas DeLuca

Dallas DeLuca (admitted *pro hac vice*)
*Attorney for Plaintiff Portland General Electric
Company*

Excerpts from Northwestern Corporation's
Amended Demand for Arbitration

Exhibit A

Exhibit A

SELF-ADMINISTERED ARBITRATION

NORTHWESTERN CORPORATION,)
)
 Claimant,)
 v.)
)
 PUGET SOUND ENERGY, INC.;)
 AVISTA CORPORATION;)
 PACIFICORP; PORTLAND GENERAL)
 ELECTRIC COMPANY; AND)
 TALEN MONTANA, LLC;)
)
 Respondents.)

**NORTHWESTERN CORPORATION’S
 AMENDED DEMAND FOR ARBITRATION**

Claimant NorthWestern Corporation (“NWE”) demands arbitration of a dispute between NWE, Puget Sound Energy, Inc. (“PSE”), Avista Corporation (“Avista”), PacifiCorp, Portland General Electric Company (“PGE”), and Talen Montana, LLC (“Talen”)¹ arising from the Parties’ ownership and operation of Colstrip Units 3 and 4 Steam Electric Generating Project and related facilities, located in Colstrip, Montana (the “Project”), under the terms of the Colstrip Units 3 and 4 Ownership and Operation Agreement, dated May 6, 1981, along with each of its four Amendments (the “O&O Agreement”). Each of the Parties is an owner of the Project and is bound by the O&O Agreement.

Specifically, there is a dispute between the Parties about the ongoing operation of Colstrip Units 3 and 4 beyond the year 2025. Respondents PSE, Avista, PacifiCorp, and PGE (the “Pacific Northwest Owners”) have insisted on and threatened to take actions that would cause the closure of the Project by 2025 in violation of the O&O Agreement.

¹ NWE, PSE, Avista, PGE, PacifiCorp, and Talen are collectively referred to as the “Parties.”

The Project's operation is vital to NWE's ability to meet customer demand, especially during peak demand, and acquisition of electrical energy in the open marketplace, with varying and perhaps prohibitive prices, is not a workable solution. NWE would need years to plan and perhaps build alternate generating sources to meet customer demand were the Project to close. Because of the recent actions taken by the Pacific Northwest Owners and Talen, the dispute regarding whether the Pacific Northwest Owners can bring about the Project's closure without the unanimous support of all the owners, requires resolution in this arbitration proceeding.

CLAIM FOR RELIEF

For the foregoing reasons, NWE requests an award declaring that under the terms of the O&O Agreement:

1. The Project can only be shut down upon a unanimous vote of the Owners when the Project, or any part thereof as originally constructed, reconstructed or added to, can no longer be made, capable of producing electricity consistent with Prudent Utility Practice or the requirements of governmental agencies having jurisdiction.
2. Unless all the Owners vote unanimously to shut down the Project, all Owners and the Operator are bound by section 32 of the O&O Agreement to act reasonably and in good faith to ensure for the continued operation of the Project as long as “the Project or any part thereof as originally constructed, reconstructed or added to is, or can be made, capable of producing electricity consistent with Prudent Utility Practice or the requirements of governmental agencies having jurisdiction . . .”
3. “Governmental agencies having jurisdiction,” as used in sections 14(b), 31, and 32 of the O&O Agreement, means federal, Montana state, and Montana local

agencies, including the Montana Department of Environmental Quality and the United States Environmental Protection Agency. This definition does not include legislatures or agencies of any other state.

4. The resource planning or other requirements that may be imposed by any governmental entity upon an Owner as a regulated utility does not provide grounds for such Owner to avoid or fail to fulfill any of its obligations under the O&O Agreement, including but not limited to their obligations to (i) act reasonably and in good faith to ensure for the continued operation of the Project as long as it is consistent with Prudent Utility Practice to do so (§ 32 of the O&O Agreement) and (ii) not unreasonably withhold their approval of the annual operating budget (§ 10 of the O&O Agreement).
5. Any Owner which either proposes or withholds their approval of the annual operating budget, in whole or in part, in an effort to cause the closure of the Project by 2025 (or any other date prior to unanimous approval of the Owners to close), may be found to be in breach of the terms and conditions of the O&O Agreement, including their obligations under section 10(a) of the O&O Agreement.
6. Any future action by any Owner or Operator that may have the effect of causing closure of the Project before the Owners vote unanimously to shut down the Project is an action in breach of the terms and conditions of the O&O Agreement and contrary to the reasonable expectations of NWE.

Dated: April __, 2021

DORSEY & WHITNEY LLP

By _____

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*Attorneys for Claimant NorthWestern
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Exhibit B

Exhibit B

From: Dallas DeLuca
Sent: Wednesday, November 17, 2021 3:08 PM
To: Brown, Aislinn; jackson.j@dorsey.com; bbarnett@susmangodfrey.com
Cc: Langston, Jeremiah; Oestreicher, Derek; Standish, Rochell; chuck@hjbusinesslaw.com; jenny@hjbusinesslaw.com; gmz@uazh.com; David Markowitz; william.schroeder@ksblit.legal; Harry Wilson; michael.adrea@avistacorp.com; tgreenfield@schwabe.com; csmartin@schwabe.com; jhanson@perkinscoie.com; bell.steve@dorsey.com; acarlis@susmangodfrey.com; afrawley@susmangodfrey.com; rsterup@brownfirm.com; April M. Stone
Subject: request for telephone conference re CV-21-47 PGE, et al. v. NW Corp., et al.

Hello J, Barry and Aislinn –

As noted in the emails earlier today, plaintiffs do not object to Talen’s and NorthWestern’s requests for two week extensions to file responses to the motion for summary judgment (Docket 102).

Plaintiffs request that defendants do not object to plaintiffs’ forthcoming motion that plaintiffs’ reply is due three weeks after the last response is filed, that plaintiffs can file one combined reply instead of three separate replies, and that plaintiffs be granted leave for an increase in the word count limit in their reply from 3250 words to 6500 words because we are combining three replies into one.

Also, we would like to have a telephone conference with all seven parties early next week concerning briefing for the summary judgment motion (Docket 102), and discovery. The topics are as follows:

1. Talen’s request for limited depositions of Mr. Greene and Mr. Roberts.
2. The Attorney General’s discovery.
3. Scheduling a time for a full Rule 26(f) conference. We prefer for that conference to happen the week after Thanksgiving. We can discuss available dates when we talk next week, or we can exchange available dates via email.
4. Filing a joint motion asking the court to set a preliminary pretrial conference.

Let us know the various times you are available Monday, Tuesday and Wednesday of next week to have the call on those four topics. We are checking schedules and will follow up this email with times plaintiffs’ counsel are available those days.

Sincerely,
Dallas

Dallas DeLuca | Lawyer

Pronouns: he/him #

Markowitz Herbold PC

1455 SW Broadway, Suite 1900 | Portland, OR 97201-3412

T (503) 295-3085 | [Bio](#) | [Web](#) | [LinkedIn](#)

COVID-19 Update: Markowitz Herbold has implemented its remote operating plan. Please email me scanned copies of any physical documents you send to our office. Otherwise they may not be timely received.

Exhibit C

Exhibit C

From: Alex Frawley <AFrawley@susmangodfrey.com>
Sent: Friday, November 12, 2021 2:11 PM
To: Michael.Andrea@avistacorp.com; william.schroeder@Ksblit.legal; CSMartin@SCHWABE.com; TGreenfield@SCHWABE.com; Hanson, Jeff (Perkins Coie); GMiller@perkinscoie.com; Schneider, Harry (Perkins Coie); J David Jackson (jackson.j@dorsey.com); Bell.Steve@dorsey.com; Brown, Aislinn; Langston, Jeremiah; Oestreicher, Derek; Chuck Hansberry; jenny@hjbusinesslaw.com; TGreenfield@SCHWABE.com; Dallas DeLuca; Harry Wilson; davidmarkowitz@markowitzbold.com; gmz@uazh.com
Cc: Barry Barnett; Adam Carlis; Jeff McLaren; RSterup@brownfirm.com
Subject: PGE et al. v. Northwestern Corporation, et al. - 1:21-cv-00047-SPW-KLD

Plaintiffs' Counsel,

I write on behalf of Talen Montana to request a two-week extension on Talen Montana's deadline to file a response to Plaintiffs' motion for partial summary judgment. Dkt. 102. Talen's response is currently due on November 19, and the extension would move the deadline to December 3. If this is agreeable to Plaintiffs, I will prepare a stipulation for your approval.

Talen Montana would also like to depose Brett Greene and Ronald Roberts, whom Plaintiffs rely on for numerous factual assertions in their motion for partial summary judgment. These depositions will cover those factual assertions. Can Plaintiffs please let us know when they are available for a remote deposition? We will then send over notices.

Best,
Alex

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