

Stephen D. Bell, Esq.
Dorsey & Whitney LLP
Millennium Building
125 Bank Street, Suite 600
Missoula, Montana 59802-4407
Telephone: (406) 329-5590
Email: bell.steve@dorsey.com

J Jackson, Esq. (*Pro Hac Vice*)
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 340-2760
Email: jackson.j@dorsey.com

Attorneys for Defendant NorthWestern Corporation

**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
NORTHWESTERN
CORPORATION'S RESPONSE
TO DEFENDANT AUSTIN
KNUDSEN'S MOTION TO
STAY**

Defendant NorthWestern Corporation ("NorthWestern"), one of six owners of Colstrip Units 3 and 4 Steam Electric Generating Project and related facilities

(the “Project”), commenced an arbitration on March 12, 2021 (amended on April 2, 2012) to address a dispute that arose between it and the Project’s other co-owners (the non-governmental parties to this lawsuit) about the ongoing operation of the Project beyond the year 2025. Plaintiffs (the Pacific Northwest Owners, “PNW Owners”) had insisted on and threatened to take actions that would cause the closure of the Project by 2025, claiming a majority of the co-owners can close the Project. NorthWestern contends a unanimous vote of the owners is required to close the Project.

After NorthWestern served its amended demand for arbitration, the Montana Legislature passed and the Montana Governor signed into law Senate Bills 265 and 266. This is one of three separate lawsuits now pending in this District addressing the enforceability of those new laws.

Because the parties to the O&O Agreement agree, and the State of Montana (“State”) concedes, the dispute over the ongoing operation of the Project belongs in arbitration, and because time is of the essence, NorthWestern moved to compel the nongovernmental parties to proceed with the arbitration NorthWestern commenced over eight months ago. (Docs. 120-123.) In response to the State’s motion to stay the PNW Owners’ motion for partial summary judgment, which addresses the

constitutionality of Senate Bill 266 (Docs. 116-18), NorthWestern reasserts the positions it took in its motion to compel arbitration.

In particular, as NorthWestern articulated in its motion to compel, the underlying lawsuit does not seek to resolve the issues NorthWestern submitted to arbitration. Rather, this and the other two lawsuits now before this Court, address the impact of Senate Bills 265 and 266 on how the arbitration is to proceed. Because no party seeks judicial determination of the claims raised in arbitration, and because the enforceability of Senate Bill 266 affects how the arbitration will proceed, in several ways that may be contrary to the language of O&O Agreement section 18,¹ the Court should not stay the PNW Owners' motion for partial summary judgment. Rather, it should grant NorthWestern's motion to compel arbitration and retain jurisdiction to address and resolve the enforceability of Senate Bill 266, at least to the extent Senate Bill 266 would prohibit the PNW Owners from asserting their respective positions regarding the proper construction of the O&O Agreement in the arbitration.

¹ As the PNW Owners state, Senate Bill 266 could prohibit the PNW Owners from asserting their respective positions regarding the proper construction of the O&O Agreement in the arbitration. (Doc. 104 at 7, 12).

CONCLUSION

For these reasons, NorthWestern urges the Court to issue an order compelling the nongovernmental parties to arbitration, so the parties may resolve the underlying dispute, and refer this matter to a magistrate judge to oversee negotiations among the nongovernmental parties regarding the arbitration processes and procedures, and deny the Attorney General's motion to stay.

DATED this 3rd day of December 2021.

DORSEY & WHITNEY LLP

By: /s/ J Jackson

Stephen D. Bell, Esq.
Millennium Building
125 Bank Street, Suite 600
Missoula, Montana 59802-4407
Telephone: (406) 329-5590
bell.steve@dorsey.com

J Jackson, Esq. (*pro hac vice*)
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 340-2760
jackson.j@dorsey.com

*Counsel for Defendant NorthWestern
Corporation*

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that NorthWestern's Response to Defendant in Support of Austin Knudsen's Motion To Stay 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 494 words.

By: /s/ J Jackson
J Jackson, Esq. (*pro hac vice*)
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 340-2760
jackson.j@dorsey.com