

# **EXHIBIT 4**

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA**

In the matter of the application for an amendment of a Major Facility Siting Act certificate by Talen Montana LLC

NOTICE OF CONTEST  
BY WESTMORELAND MINING LLC  
AND WESTMORELAND ROSEBUD  
MINING LLC

**Notice of Contest**

1. Westmoreland Mining LLC and Westmoreland Rosebud Mining LLC (the “Contesters”) contest approval of the amendment of the Major Facility Siting Act Certificate for Colstrip Units 3 and 4 sought by Talen Montana, LLC (“Talen Montana”) in its notices dated March 29, 2019, and March 15, 2019, and preliminarily approved by the State of Montana Department of Environmental Quality (the “Department”) on May 4, 2019, and May 10, 2019, without providing an opportunity for public comment on the application.
2. The requested amendment of the certificate will prejudice the substantial rights of the Contesters.
3. Approval of the requested amendment of the certificate would be:
  - a. in violation of constitutional and statutory provisions, MCA 2-4-704(2)(a)(i);

- b. in excess of statutory authority of the Department and the Board of Environmental Review (the “Board”), MCA 2-4-704(2)(a)(ii);
  - c. made upon unlawful procedure, MCA 2-4-704(2)(a)(iii);
  - d. affected by other errors of law, MCA 2-4-704(2)(a)(iv);
  - e. clearly erroneous in view of the reliable, probative, and substantial evidence to be adduced on the record in this contest proceeding, MCA 2-4-704(2)(a)(v);
  - f. arbitrary and capricious, MCA 2-4-704(2)(a)(vi); and
  - g. characterized by abuse of discretion or clearly unwarranted exercise of discretion, MCA 2-4-704(2)(a)(vi).
4. Colstrip Units 3 and 4 are in the city of Colstrip located in Section 2, Township 2 North, Range 41 East, Rosebud County, Montana.
5. Colstrip Units 3 and 4 are collocated with Colstrip Units 1 and 2 which are not subject to the certificate.
6. The city of Colstrip was originally established as a mining town to provide coal for transcontinental railroads prior to conversion to diesel by the late 1950s.
7. Because of the preexisting surface coal mining operation in Colstrip and the extensive coal reserves remaining, particularly in the low-sulfur Rosebud seam,

the city was ideal for construction of a large mine-mouth steam coal power plant that minimized environmental impacts.

8. Colstrip Units 1 and 2 are 333 MW generating units that commenced operation in 1975 and 1976, respectively.

9. Colstrip Units 3 and 4 are much larger 805 MW generating units that commenced operations in 1984 and 1986, respectively.

10. Colstrip Units 3 and 4 were sited, designed, and subjected to conditions of operation pursuant to the provisions of the Major Facility Siting Act MCA 75-20-101 *et seq.* (“MFSA”) and the certificate originally issued thereunder in proceedings culminating in decisions by the Board in 1976 and 1979.

11. The requirement that Colstrip Units 3 and 4 must burn only the locally available, mine-mouth coal in the Rosebud seam has always been an essential basis of the statutorily required findings underlying the issuance of the certificate and compliance with the requirement of the MFSA that certified facilities must minimize environmental impacts.

12. Contesters, thousands of families, local government, businesses, and the State have made numerous decisions and significant investments over many decades in reliance on the mine-mouth coal requirement.

13. Reliance on the continued existence of the mine-mouth coal requirement for the local Rosebud coal reserves has been, and continues to be, reasonable because only the use of available mine-mouth coal minimizes environmental impacts.

14. Today, the entire city of Colstrip, Rosebud County, and the proximate surrounding areas directly rely on the economics generated pursuant to Colstrip Units 3 and 4 and the Rosebud mine, as well as the many local businesses who are supported indirectly by providing goods and services incidental to the mine.

15. Contesters currently employ approximately 390 employees in Colstrip, pay over \$40 million in local payroll annually, and spend over \$60 million annually for goods and services in Montana. This number is even greater when you consider the multiplier effect on the community.

16. The State of Montana currently receives more than \$30 million annually in State gross proceeds, severance, and RITT taxes from Contester's operations in Colstrip.

17. The purpose of the amendment sought by Talen Montana is to (i) eliminate the requirement that Colstrip Units 3 and 4 only utilize local Rosebud seam coal, and (ii) to alter and add facilities to enable the receipt and use of coal mined elsewhere and transported to Colstrip, including coal located in Wyoming 300 miles away by rail.

18. Of the additional mines identified in the application, Talen Montana sought permission to obtain coal from four mines located in Montana, excluding the Absaloka mine which is owned and operated by Westmoreland Mining, LLC. However, the Signal Peak mine is known to contain high heat value and high cost coal that is exclusively exported to Asian markets, the Decker and Spring Creek mines are known to contain high sodium levels and would not be suitable for burning at Colstrip, and the Otter Creek Mine does not currently exist. As such, only Wyoming coal would be utilized as a result of the amendment.

19. The amendment sought by Talen Montana would increase environmental impacts, result in significant socioeconomic harms to the people of Colstrip, cause extensive economic dislocation, dramatically reduce the revenues of the State of Montana, and upset the investment-backed expectations of Contesters and their workforce.

20. Removing the mine-mouth coal requirement has the potential to ultimately result in the premature closure of the Rosebud mine, as the market for Rosebud coal cannot be fully replaced and the structure of the mine requires a threshold production level.

21. Removing the mine-mouth coal requirement has the potential to ultimately result in the premature and accelerated retirement of Colstrip Units 3 and 4 if the Rosebud mine is prematurely closed and transportation rates for coal from

Wyoming are increased in response to the additional economic leverage that would result, compounding the harms to the people of Colstrip and the State of Montana.

22. At a minimum, the State of Montana and its people would suffer from increased environmental impacts, including those resulting from transportation of millions of tons of coal per year by rail or truck that would not occur if Colstrip Units 3 and 4 only burn local mine-mouth coal until the local coal reserves are exhausted.

23. Talen Montana submitted the revised application on March 29, 2019.

24. The 30-day deadline imposed by MCA 75-20-219(1)(a) only required the Department to determine within that time “whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.”

25. Talen Montana’s application contains requests to enable it “to utilize coal for Units 3 and 4 from mines other than the Rosebud mine and to modify coal handling facilities to enable Colstrip to receive and utilize such coal.” Revised Application, at 5.

26. Talen Montana’s plan to obtain and transport coal to Colstrip Units 3 and 4 from other mines requires each aspect of the amendment that it seeks, and no part of the amendment sought by Talen Montana is a stand-alone, independent change.

27. The Department prepared a draft environmental assessment on April 23, 2019, that is explicitly limited to “the impacts for the additional coal handling facilities” and does not address (i) any of the impacts resulting from the elimination of the requirement to burn only locally available coal from the Rosebud seam, or (ii) the transportation and surface mining of coal and associated activities that would result from granting Talen Montana’s application. Exhibit 1, at 3.

28. The Department did not prepare an environmental impact statement for the application.

29. The Department’s draft environmental assessment did not address the adequacy of the existing single-track rail line into Colstrip to serve its current uses while also being used to accommodate additional rail traffic that would result from granting Talen Montana’s application.

30. The Department’s draft environmental assessment did not address the resulting environmental impacts or public safety implications from increased transportation of coal by rail and truck in Montana that would result from granting Talen Montana’s application.

31. The Department’s draft environmental assessment did not address the resulting environmental impacts from increased underground and surface mining at other mines in Montana that would result from granting Talen Montana’s application, including mines that have not yet been developed.

32. The Department's draft environmental assessment did not address many other environmental impacts, socioeconomic consequences, and harms to local government and the State that will occur if Talen Montana's application is approved, other than the following cursory statements: "If Units 3 and 4 were to bring in NR coal, it could have a negative impact to Western Energy Company Rosebud Mine's employment if they were unable to secure a comparable customer as Colstrip for their coal. . . . The Proposed Action Alternative could increase tax revenue due to the additional features of the transportation area to the Units 3 and 4 Plant Site. If NR coal was used and Western Energy Company's Rosebud Mine was unable to secure a customer equivalent to the Colstrip Units, they might have to curtail mining at their current rate. This could reduce tax revenue to the state and local community."

Exhibit 1, at 12.

33. The Department's draft environmental assessment only considered Talen Montana's proposed action (without addressing all of its aspects) and "No Action" as the sole alternative. Exhibit 1, at 6.

34. The draft environmental assessment asserts that it (but not Talen Montana's application) "was posted on April 23, 2019 to DEQ's website, mailed to the active parties to [sic] original pproceeding [sic] and released for public comment." Exhibit 1, at 5.

35. The Department stated “[c]omments will be accepted no later than April 25, 2019,” two days later and before any original parties would have even received the draft environmental assessment by mail. Exhibit 1, at 6.

36. The Department stated that “[d]ue to statutory timelines” the April 25, 2019, deadline “cannot be extended.” Exhibit 1, at 6.

37. The Department did not provide an opportunity for public comment on Talen Montana’s underlying application or on aspects of the application which were excluded from the scope of the draft environmental assessment.

38. The Department stated that the “Proposed Action” addressed by the draft environmental assessment was limited to the portions of the application “described in Section 1.2”, which only addresses the environmental impacts of a new coal handling area and not Talen Montana’s proposed shift to non-Rosebud coal. Exhibit 1, at 6.

39. The Department stated that a “short timeframe required by statute . . . does not allow sufficient time for preparation of a full or supplemental environmental impact statement” based on its reading of MCA 75-20-219(1)(a). Exhibit 1 at 15.

40. The Department’s 18-page draft environmental assessment was prepared by a single individual and reviewed by a single individual. Exhibit 1, at 15.

41. On May 3, 2019, the Department prepared a document stating that “DEQ hereby approves the proposed amendment to the Certificate set forth on page 1 of this document.” Exhibit 2, at 5.

42. Page 1 of the document lists all aspects of the amendment to the certificate sought by Talen Montana’s application. Exhibit 2, at 1.

43. Page 2 of the document states: (1) “DEQ has determined the use of the non-Rosebud Seam coal from the [non-local] mines . . . would not result in a material increase in any environmental impact or a substantial change in the location of the facility,” (2) “DEQ is required to automatically grant the amendment,” and (3) “DEQ will document this decision in a separate decision document.” Exhibit 2, at 2.

44. The Department prepared this separate decision document addressing its no impact and no substantial change determination on May 10, 2019. Exhibit 3.

45. The Department did not justify the basis for its segmentation of Talen Montana’s application for purposes of (i) answering the question posed by MCA 75-20-219(1)(a) and (ii) its determination that MCA 75-20-219(2) applied only to the portion of Talen Montana’s application relating to the removal of the requirement to burn only locally available Rosebud seam coal in Colstrip Units 3 and 4.

46. The May 3, 2019, and May 10, 2019 Department documents do not address the adequacy of the existing single-track rail line into Colstrip to serve its current uses while also being used to accommodate additional rail traffic that would

result from granting Talen Montana's application. Further, neither document addresses the potential public safety impacts or environmental consequences associated with a substantial increase in truck and/or rail activity associated with approval of the amendment.

47. The May 3, 2019, and May 10, 2019 Department documents do not address the resulting environmental impacts from increased transportation of coal by rail and truck in Montana that would result from granting Talen Montana's application.

48. The May 3, 2019, and May 10, 2019 Department documents do not address the resulting environmental impacts from increased underground and surface mining at other mines in Montana that would result from granting Talen Montana's application, including mines that have not yet been developed.

49. The May 3, 2019, and May 10, 2019 Department documents do not address many other environmental impacts, socioeconomic consequences, and harms to local government and the State that will occur if Talen Montana's application is approved.

50. The May 3, 2019, and May 10, 2019 Department documents do not address the environmental impacts related to constructing a rail off-loader and the accompanying liability related to reclamation of disturbed acreage on lands that have very recently received final bond release for final reclamation.

51. The May 10, 2019 document only compares coal composition information and potential changes in air emissions from the stack of Colstrip Units 3 and 4 and coal waste releases resulting from the use of different coal mines to supply them. Exhibit 3, at 4.

52. An amendment must not materially alter the findings that were the basis for granting the certificate. ARM 17.20.1804.

53. The May 3, 2019, and May 10, 2019 Department documents only refer to (and cite or reference in any way) the initial, incomplete, findings that were the basis for granting the certificate issued on July 22, 1976. *See, e.g.,* Exhibit 2, at 4; Exhibit 3, at 2.

54. The May 3, 2019, and May 10, 2019 Department documents do not cite or reference in any way the Additional Findings of Fact and Conclusions of Law that were also part of the basis for granting the certificate, and which were required by the Supreme Court of Montana and issued in June of 1979. *See Bd. of Nat. Res. v. N. Plains Res. Council*, 601 P.2d 27, 28 (1979).

55. The Department concluded—with consideration of the *additional* 1979 findings of fact and conclusions of law—that “the proposed amendment would not materially alter the findings required by the Administrative Rules of Montana, title 17, chapter 17, chapter 20, subchapter 16 that were the basis for granting the Certificate.” Exhibit 2, at 5.

### **Nature of the Hearing**

56. This contest of Talen Montana's requested amendment to its MFSA certificate is a *de novo* proceeding because the Department's approval was made without providing an opportunity for public comment on the application, such that the first sentence of MCA 75-20-223(2) does not apply.

57. The Board will first consider this Notice of Contest at its next scheduled meeting.

58. The Contesters and Talen Montana each have the right to elect to have this contest proceed in district court rather than before the Board. MCA 75-20-223.

59. The time and place of the contest hearing will be determined by the Board, hearing officer, or district court, as applicable.

60. A formal proceeding may be waived pursuant to MCA 2-4-603.

61. The Contesters shall prevail upon showing clear and convincing evidence that the Department's determination preliminary approving the amendment sought by Talen Montana is not reasonable. MCA 75-20-219(3).

### **Statement of Legal Authority and Jurisdiction**

62. The board has legal authority and jurisdiction pursuant to MCA 75-20-223 as well as the relevant provisions of the Montana Administrative Procedure Act MCA 2-4-101 *et seq.* and MFSA.

## **Statement of Asserted Matters in Contest and Issues Involved**

63. The following are short and plain statements of the matters asserted in contest and the issues involved, as the Contesters are justifiably unable to state the matters in detail at this time due to inadequacies of Talen Montana's application and the unavailability of important relevant documents.

### *A. Statutory Deficiencies under the MFSA*

64. Material Alteration: The “effects that the proposed change or addition to the facility contained in the notice for the certificate amendment” will produce will “materially alter the findings required by subchapter 16 that were the basis for granting the certificate,” including but not limited to findings contained in the Additional Findings of Fact and Conclusions of Law issued in June of 1979. ARM 17.20.1804; *Cf. Board of Natural Resources and Conservation v. Northern Plains Resources Council*, 601 P.2d 27, 28 (1979) (reviewing specific findings relating to “using Rosebud coal” and “mine-mouth generation”); Exhibit 2, at 4 (only stating department considered findings made in 1976).

65. Unlawful Segmentation: The entire amendment sought by Talen Montana, noticed originally on March 15, 2019, and renoticed and revised on March 29, 2019, is indivisible for purposes of MCA 75-20-219(b), and the Department’s segmentation of the project for purposes of MCA 75-20-219(b) was unlawful, unreasonable, arbitrary, and capricious.

66. Public Interest, Convenience, and Necessity: The amendment does not “serve the public interest, convenience, and necessity” in light of “need,” “environmental impact,” “benefits to the applicant,” “benefits to . . . the state,” “effects of the economic activity,” “effects . . . on the public health,” “effects . . . on the public . . . welfare,” “effects . . . on the public . . . safety,” and “other factors” that are “relevant.” MCA 75-20-301(f); MCA 75-20-301(2).

67. No Automatic Entitlement - Increased Impact: The certificate holder is not entitled to automatic amendment because the proposed change will result in “a material increase” in one or more “environmental impact[s],” including but not limited to the environmental impacts resulting from the use of transported coal rather than mine-mouth coal such as diesel emissions and other environmental impacts. MCA 75-20-219(2).

68. No Automatic Entitlement - Substantial Change: The certificate holder is not entitled to automatic amendment because the proposed change will result in “a substantial change in the location of all or a portion of the facility.” MCA 75-20-219(2).

69. Excess Environmental Impact: The amendment does not “minimize[] adverse environmental impact . . . considering the state of available technology and the nature and economics of various alternatives,” including but not limited to the excess unnecessary environmental impacts resulting from the use of transported coal

rather than mine-mouth coal, such as diesel emissions and other environmental impacts. MCA 75-20-301(1)(c).

70. Insufficient Notice: The certificate holder and the Department failed to provide “notice to all active parties to the original proceeding.” MCA 75-20-219.

71. Need: The amendment is not “need[ed].” MCA 75-20-301(1)(a).

72. Inappropriate: The amendment is not “appropriate” given the “material increase in any environmental impact of the facility.” MCA 75-20-219(1)(b).

73. Permits: The certificate holder has not yet obtained “necessary air or water quality decision[s], opinion[s], order[s], certification[s], or permit[s].” MCA 75-20-301(1)(g).

74. Air and Water Permit Processing: The amendment “would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board” such that “the amendment must be processed under the applicable statutes administered by the department or board.” MCA 75-20-219(4); *cf.* MCA 75-20-216(3) (providing permits must be issued “within 9 months *following the date of acceptance of an application*” (emphasis added)).

75. Environmental Impact Statement: The Department has not prepared an environmental impact statement for the entire application. MCA 75-20-223(3).

*B. Deficiencies under the Administrative Rules of Montana*

76. Application Insufficiency - General: The certificate holder failed to “provide drawings, analyses, maps, and other information *at a level of detail equivalent to that required in an application* to describe any proposed change to a facility in a notice for amendment to a certificate.” ARM 17.20.1802 (emphasis added).

77. Application Insufficiency - Purpose and Benefits: The certificate holder failed to provide a sufficient “explanation of the purpose” of the amendment “and the benefits that it will provide.” ARM 17.20.901.

78. Application Insufficiency - Alternatives Evaluation: The certificate holder failed to provide a sufficient “evaluation of the nature and economics of alternatives” to the amendment, including but not limited to, the “alternative energy technologies that could be implemented . . . , the no action alternative, and alternative technological components and pollution control systems.” ARM 17.20.1301(1), ARM 17.20.1301(2).

79. Application Insufficiency - Alternatives Comparison: The certificate holder failed to provide a sufficient “comparison of alternatives leading to selection of the proposed” change to the “facility as the preferred alternative, and an explanation of the reasons for selection of the proposed” change to the “facility.” ARM 17.20.1301(1).

80. Application Insufficiency - Alternatives Ranking: The certificate holder failed to provide a sufficient “evaluation of relevant alternatives listed in ARM 17.20.1301, leading to a ranking of alternatives and selection of the proposed” change to the “facility.” ARM 17.20.1302(1).

81. Application Insufficiency - Alternatives Methods and Criteria: The certificate holder failed to provide “a detailed description of the methods and criteria used by the applicant to select the proposed facility given the capacity, availability, and types of alternatives, and to determine the proper size and timing of construction, in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost” including “[a] description of the methods used to select the proposed designs for major process areas.” ARM 17.20.1302(2).

82. Application Insufficiency - Alternatives Documentation: The certificate holder failed to provide “[d]ocumentation for process tradeoff studies performed by the applicant.” ARM 17.20.1302(2).

83. Application Insufficiency - Alternatives Levelized Cost: The certificate holder failed to provide a sufficient “rank[ing] by the leveled delivered cost of energy, including known mitigation costs.” ARM 17.20.1302(3).

84. Application Insufficiency - Alternatives Criteria Comparison: The certificate holder failed to provide a sufficient comparison of alternatives on the

basis of “performance, system impact, and environmental impact” criteria.” ARM 17.20.1302(3).

85. Application Insufficiency – Reasons for Dropping Alternatives: The certificate holder failed to provide a sufficient “explanation . . . of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.” ARM 17.20.1302(5).

86. Application Insufficiency - Baseline Study: The certificate holder failed to provide a sufficient “baseline study of the proposed” change to the facility and site “and the proposed and any alternative[s] . . . and their impact zones” including “describing the existing environment,” “assess[ing] impacts associated with the proposed” change to the “facility,” and “identify[ing] mitigation strategies for potentially significant adverse impacts.” ARM 17.20.1418(1).

87. Application Insufficiency - Consultation Demonstration: The certificate holder failed to demonstrate “the results of consultation with appropriate government agencies to identify their concerns about the proposed” changes to “the facility’s possible effects on the environment, and the way the applicant considered these concerns in identifying mitigating measures to address potentially significant impacts of the facility.” ARM 17.20.1418(7).

88. Application Insufficiency - Serious Impacts: The certificate holder failed to prepare and provide a sufficient “a summary of any unmitigated impacts . . . that

may pose a threat of serious injury or damage to the environment, social and economic conditions of inhabitants of the affected area or the health, safety, or welfare of area inhabitants.” ARM 17.20.1418(12)(e).

89. Application Insufficiency - Potentially Significant Impacts: The certificate holder failed to prepare and provide a sufficient “summary of potentially significant adverse impacts of the proposed site and off-site associated facilities, and the impact zones around them as determined by the baseline study conducted pursuant to department Circular MFSA-1” “for the impact categories listed in department Circular MFSA-1.” ARM 17.20.1418(12)(a); ARM 17.20.1418(13).

90. Application Insufficiency - Adverse Local Impacts Analysis: The certificate holder failed to “identify and discuss available alternative levels and types of mitigation to reduce or eliminate potentially significant adverse impacts . . . including . . . adverse impacts on local communities.” ARM 17.20.1418(10).

91. Application Insufficiency - Adverse Local Impacts Plan: The certificate holder failed to develop and provide “plans to reduce adverse impacts on local communities, including, but not limited to, plans for meeting the service needs of the work force and maintaining the existing quality of services.” ARM 17.20.1418(10).

92. Application Insufficiency - Mitigating Measures: The certificate holder failed to prepare and provide a sufficient “description of mitigating measures, if any,

proposed for potentially significant adverse impacts” including “an evaluation of any increased impact to other resources resulting from implementation of each mitigating measure” “for the impact categories listed in department Circular MFSA-1.” ARM 17.20.1418(12)(b); ARM 17.20.1418(12)(c); ARM 17.20.1418(13).

93. Application Insufficiency - Mitigating Measure Costs: The certificate holder failed to determine and provide “the estimated cost of implementing each level and type of mitigating measure to reduce or eliminate potentially significant adverse impacts that would occur” including “adverse impacts on local communities.” ARM 17.20.1418(11); ARM 17.20.1418(10).

94. Application Insufficiency - Cost and Degree Comparison: The certificate holder failed to prepare and provide a sufficient “comparison of the estimated cost and the degree of mitigation achieved, for each alternative level and type of mitigation measure considered to address each potentially adverse significant impact” “for the impact categories listed in department Circular MFSA-1.” ARM 17.20.1418(12)(f); ARM 17.20.1418(13).

95. Application Insufficiency - Selection Reasoning: The certificate holder failed to prepare and provide a sufficient “explanation of the . . . reasons for selecting the proposed mitigating measures and . . . explanation of the . . . reasons for not selecting other mitigating measures.” ARM 17.20.1418(12)(g).

*C. Deficiencies under Department Circular MFSA-1*

96. Application Insufficiency - Circular MFSA-1 Compliance: The certificate holder failed to comply with the requirements set forth in Circular MFSA-1 which are legally mandated by ARM 17.20.1418(14) and ARM 17.20.1418(9).

97. Application Insufficiency - Unmitigated Potentially Significant Impacts: The certificate holder failed to prepare and provide a sufficient “summary of potentially significant adverse impacts at the proposed site and off-site associated facilities for which no mitigation has been identified” “for the impact categories listed in department Circular MFSA-1.” ARM 17.20.1418(12)(d); ARM 17.20.1418(13).

98. Application Insufficiency - Social and Economic Impact Assessment: The certificate holder failed to prepare and provide a sufficient “detailed qualitative and quantitative assessment of social impacts and impacts . . . on the economy, public and private services, and the fiscal affairs of local governments and school districts” within a 50-mile radius of the site. Circular MFSA-1 3.6.1.

99. Application Insufficiency - Social and Economic Baseline Study: The certificate holder failed to prepare and provide a sufficient “description of existing social characteristics and characteristics of the local economy of the communities within a reasonable commuting distance of the proposed site” including “[p]rojected future social and economic conditions should the facility not be built,” “the

relationship of current land uses to economic and social activities in the area,” “existing federal, state and local government land use plans and other local legal restrictions affecting land uses,” “population and demographic characteristics,” “social structures, values and lifestyles that may be affected,” “identification of any sub-groups that may be differentially affected by the project,” “the local economy,” “income characteristics,” “labor force participation characteristics,” “the availability of skilled and semi-skilled labor,” “prevailing wage levels,” “employment and unemployment rates,” “the availability, adequacy, capacity and cost of public services, including roads, education, health, social, public safety, and sanitary services and water supply,” “fiscal characteristics of local governments and school districts, including descriptions of revenue and expenditures,” and “the availability, adequacy, capacity and cost of private services, including housing, health and retail and wholesale goods and services.” Circular MFSA-1 3.5.1.

100. Application Insufficiency - Rail Impacts: The certificate holder failed to prepare and provide a sufficient “assessment of . . . increase[d] rail traffic in residential areas and at road crossings” and “assessment of safety hazardous, noise impacts, and interference with public travel.” Circular MFSA-1 3.4.1.

101. Application Insufficiency - Truck Traffic Impact: The certificate holder failed to provide certain ground transportation analyses including, but not limited to, a “description of the impact of the facility on congestion in regional transmission or

transportation network” and “a discussion of the adequacy of the existing bulk transmission or transportation system to handle projected flows with the facility in operation, and a discussion of congestion and the likely need for any capacity expansion.” Circular MFSA-1 3.31

102. Application Insufficiency - Public Meeting: The certificate holder failed to “conduct” “public meetings that are reasonably accessible to persons residing” in Colstrip, Montana. Circular MFSA-1 3.7(1).

103. Application Insufficiency - Public Attitudes and Concerns: The certificate holder failed to prepare and provide a sufficient “assessment of public attitudes and concerns about the potential impacts . . . that is based on representative views of person” residing within a 50-mile radius of the site including “summaries of correspondence,” summaries of personal interviews,” “other information . . . collected that records the comments and concerns public officials, local residents and other individuals and groups have raised,” and “address[ing]” “concerns about social, socioeconomic, and land use changes the facility could cause,” “concerns about natural environmental features that may be adversely affected by the facility,” “issues relating to the facility that may divide communities, cause individual resentment and frustration, and result in public debate,” and “issues relating to the facility of particular concern to landowners and residents of the area within 5 miles.” Circular MFSA-1 3.7(2); Circular MFSA-1 3.7(3).

104. Application Insufficiency - Preliminary Plan: The certificate holder provided only “preliminary” plan information that “will be adjusted with final design” contrary to the requirements of ARM 17.20.1418. *See Montana Department of Environmental Quality, Draft Environmental Assessment* at 17 (April 23, 2019).

105. Application Insufficiency - Land Use Impacts Assessment: The certificate holder failed to prepare and provide a sufficient “assessment of land use impacts . . . on agricultural, residential, commercial, industrial, mining, and public land uses” including “the nature of land use changes expected to result” in and around Colstrip, Montana and particularly “the nature and amount of existing land uses that could reasonably be expected to be displaced.” Circular MFSA-1 3.4.1.

106. Application Insufficiency - Site Depictions: The certificate holder failed to provide certain requisite depictions of the site, including, but not limited to: “a 1:24,000 topographic base map” “depict[ing] the proposed site and its boundaries”; “overlays . . . to the base map . . . of the baseline data required by department Circular MFSA-1 that can be mapped and are within the impact zones”; “1:4800 topographic maps . . . showing the locations . . . of [among others] the generators, emission control devices . . . cooling towers, water storage ponds, waste disposal ponds, roads . . . railroad spurs . . . pumping stations . . . and any [other] existing structures for the proposed sites, noting structures that would be relocated or destroyed”; “color contact prints . . . that provide complete aerial stereo coverage of

the proposed sites, the geographic area within a five mile radius of the proposed site, and within a 1/2 mile buffer of the proposed . . . facilities”; and “USGS 7.5 minute orthophoto quads . . . for the impact zones or portions of impact zones that are not covered by the aerial photos.” ARM 17.20.1418(2), (3), (4), (5).

**107. Application Insufficiency - Public Alternative Mitigation Suggestions:**

The certificate holder failed to “identify alternative mitigation strategies . . . suggested by the public.” Circular MFSA-1 3.7(2).

**Prayer for Relief**

In light of the foregoing, Contesters respectfully request the Board of Environmental Review deem the Department’s approval of Talen Montana’s amendment to its certificate under the MFSA void *ab initio*, vacated, set aside, and the matter remanded to the Department for further review in conformance with the requirements of the MFSA, Administrative Rules of Montana, and Department Circular MFSA-1. Contesters also request all preliminary and other relief the Board deems just and appropriate.

Respectfully submitted this 17th day of May 2019.

/s/ Rosario C. Doriott Domínguez

*On behalf of Contesters Westmoreland  
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Mining LLC.*

## Certificate of Service

I certify that on May 17, 2019, in accordance with BER Policy No. 2002.01.01 and applicable law, I mailed an original copy of this Notice of Contest with all accompanying exhibits to the Secretary, Board of Environmental Review, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901, with copies by e-mail to the following:

Board of Environmental Review, at [ber@mt.gov](mailto:ber@mt.gov)

Ms. Lindsay Ford, Board Secretary, at [Lindsay.Ford@mt.gov](mailto:Lindsay.Ford@mt.gov)

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/s/ Rosario C. Doriott Domínguez

*On behalf of Contesters Westmoreland  
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