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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
MAY 22, 2019)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
May 22, 2019
2:00 p.m.

BEFORE CHAIR CHRIS DEVENY;
BOARD MEMBERS JOHN DEARMENT,
DEXTER BUSBY, MELISSA HORNBEIN,
and DAVID LEHNHERR (By telephone)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR DEVENY: Good afternoon. I would
5 like to call to order this meeting of the Board of
6 Environmental Review. And Lindsay, would you
7 please take a roll call to see if we have a quorum
8 of Board members.

9 MS. FORD: Chris Deveny.

10 CHAIR DEVENY: Here.

11 MS. FORD: Dexter Busby.

12 (No response)

13 MS. FORD: Dexter Busby?

14 (No response)

15 MS. FORD: Hillary Hanson.

16 (No response)

17 MS. FORD: Hillary Hanson.

18 (No response)

19 MS. FORD: John DeArment.

20 MR. DEARMENT: Here.

21 MS. FORD: Chris Tweeten.

22 (No response)

23 MS. FORD: Chris Tweeten.

24 (No response)

25 MS. FORD: Melissa Hornbein.

1 (No response)

2 MS. FORD: Melissa Hornbein.

3 (No response)

4 MS. FORD: David Lehnherr.

5 MR. LEHNHERR: Here.

6 MS. FORD: We currently have three Board
7 members present. We do not at this time have a
8 quorum.

9 CHAIR DEVENY: Let's wait and hopefully
10 somebody will come on. Would you check to see if
11 people are having trouble connecting, please.

12 MS. FORD: Do we have any other Board
13 members on the line?

14 (No response)

15 (Off the record briefly)

16 MS. FORD: Do we have any other Board
17 members that have joined the conference call?

18 (No response)

19 MS. FORD: Melissa Hornbein.

20 (No response)

21 MS. FORD: Melissa Hornbein.

22 MS. HORNBEIN: Hello.

23 MS. FORD: Melissa?

24 MS. HORNBEIN: Here.

25 MS. FORD: Why don't I go through the

1 roll one more time. Chris Deveny.

2 CHAIR DEVENY: Here.

3 MS. FORD: John DeArment.

4 MR. DEARMENT: Here.

5 MS. FORD: Melissa Hornbein.

6 MS. HORNBEIN: Hello.

7 MS. FORD: Melissa, was that you?

8 MS. HORNBEIN: Yes, it is.

9 MS. FORD: We can hear you now.

10 MS. HORNBEIN: I'm not sure what was
11 going on, and I apologize for my lateness.

12 MS. FORD: No problem. So David
13 Lehnherr.

14 MR. LEHNHERR: Here.

15 MS. FORD: Dexter Busby.

16 (No response)

17 MS. FORD: We do have four members
18 present. We do have a quorum.

19 CHAIR DEVENY: Thank you, Lindsay.

20 Okay. Let's go ahead with introductions with
21 other people in the room. Start with Sarah.

22 MS. CLERGET: Sarah Clerget with the
23 AG's office, and attorney for the Board.

24 MR. MATHIEUS: George Mathieus, Deputy
25 Director and Board liaison.

1 MS. FORD: Lindsay Ford, Board
2 secretary.

3 MS. DOMINGUEZ: Rosario Doriott
4 Dominguez on behalf of Westmoreland Mining.

5 MR. COTTRELL: Jeremy Cottrell,
6 Associate General Counsel, Westmoreland Mining.

7 MR. CHEREN: Robert Cheren, Baker
8 Hostetler.

9 MR. TABARACCI: John Tabaracci,
10 NorthWestern Energy. Just watching.

11 MR. JAMES: Darrell James (phonetic),
12 consultant to Westmoreland.

13 MR. WADE: Steve Wade, Browning,
14 Kaleczyc, Berry and Hoven. Just watching.

15 MR. KLEMP: David Klemp, Air Quality
16 Bureau Chief, Department of Environmental Quality.

17 MS. SCHERER: Sandy Scherer, DEQ.

18 MR. LUCAS: Mark Lucas, DEQ staff
19 attorney.

20 MR. HAYES: Ed Hayes, Acting Chief Legal
21 for DEQ.

22 MR. JONES: Craig Jones, Major Facility
23 Siting, DEQ.

24 CHAIR DEVENY: Thank you. I believe
25 there is some other people on the phone. Are

1 there others on the phone who would please
2 identify themselves.

3 MR. BOOHER: Yes. This is Marty Booher
4 from Baker Hostetler. I'm on the telephone. I
5 represent Westmoreland.

6 MR. STERUP: Rob Sterup, Brown Law Firm
7 in Billings representing Talen Montana.

8 CHAIR DEVENY: Could the last person who
9 spoke repeat your name for our Court Reporter.

10 MR. OBIE: Damon Obie and Andrew Wright,
11 in-house attorneys for Talen Energy.

12 MR. FRANK: Good afternoon. This is
13 Joshua Frank from Baker Botts on behalf of Talen.

14 MR. HAIGHT: Adam Haight with Montana
15 AFL-CIO.

16 CHAIR DEVENY: Anybody else?

17 MR. BUSBY: This is Dexter Busby.

18 CHAIR DEVENY: Welcome, Dexter. You're
19 the fifth Board member present now. Besides
20 myself we have John DeArment, and David, and
21 Melissa. I'd like to remind those people on the
22 phone to please mute your phones so we don't have
23 a lot of feedback, and also when you speak, to
24 identify yourself so that our Court Reporter can
25 get the record correct in the minutes.

1 All right. So the purpose of this
2 meeting is two fold: First to open the case in
3 the matter of the Major Facility Siting Act
4 certificate for Colstrip Units 3 and 4 that were
5 received by the Board on May 17th; and then the
6 second part of our meeting will be to decide how
7 we're going to consider the emergency motion that
8 was filed by Westmoreland.

9 So the first thing the Board needs to do
10 is in the matter of the Major Facility Siting Act.
11 We have choices here. We can hear the case
12 itself; we can assign it to the Hearings Examiner
13 for procedural issues, and then do the rest
14 ourselves; or we can assign it to the Hearing
15 Examiner for the totality of the case, which would
16 be for procedural and the rest of the case except
17 for the final decision making, which would be of
18 course by the Board.

19 So any discussion by Board members, or
20 do you have a pleasure on what you would like to
21 do with this case?

22 (No response)

23 CHAIR DEVENY: Don't all speak at once.

24 (No response)

25 CHAIR DEVENY: I would like to suggest

1 that we assign this case to our Hearing Examiner
2 for the totality. I think it's something that
3 would best be handled by her. None of us have
4 really ever taken on a full case before, for those
5 of you Board members that are new, and I think
6 this would be the best way to proceed. I would
7 make a motion to do so.

8 MR. BUSBY: I'll second.

9 MR. DEARMENT: I'll second. This is
10 John.

11 CHAIR DEVENY: I believe Dexter seconded
12 that; is that correct?

13 MR. BUSBY: Yes.

14 CHAIR DEVENY: Is there any discussion
15 by Board members on the motion or the second?

16 (No response)

17 CHAIR DEVENY: Hearing none --

18 MR. BUSBY: I think John wanted to say
19 something. I couldn't hear him, though.

20 MR. DEARMENT: Yes. This is John. You
21 beat me to it, Dexter. I was just seconding the
22 Chair's motion.

23 CHAIR DEVENY: If there is no further
24 discussion, let's have a vote on this motion. All
25 those in favor of assigning the case in its

1 totality to Sarah, please signify by saying aye.

2 (Response)

3 CHAIR DEVENY: I believe we have all
4 five votes as aye's. Are there any nay's in case
5 I missed?

6 (No response)

7 CHAIR DEVENY: Motion carries
8 unanimously, so Sarah, it's in your court.

9 MS. CLERGET: Great.

10 CHAIR DEVENY: The second part of the
11 case has to do with considering the --

12 MS. CLERGET: Well, wait a minute,
13 Chris. Unless you to modify or change the motion
14 that you just made, you assigned it to me for a
15 Hearing Examiner, so that means I have to --

16 CHAIR DEVENY: You have to do
17 everything. Okay.

18 MS. CLERGET: If you want to change
19 that, and you would like to keep it and make a
20 decision on the emergency motion, you can do that.

21 CHAIR DEVENY: No, I don't. At this
22 point I'm happy to turn it over to Sarah then.

23 MS. CLERGET: All right. So in that
24 case, I will contact the parties to determine how
25 to proceed. So to the extent that all of the

1 parties are here, we can do that after this
2 meeting adjourns, if everybody is amenable to
3 that. And I would prefer if that meant
4 Westmoreland, DEQ; and I think if Talen, I don't
5 know if you plan on intervening or not, but if you
6 do, then please stay. So --

7 MR. FRANK: This is Joshua Frank for
8 Talen. Yes, I certainly will be involved, and
9 would intervene in the proceeding. I'm on the
10 phone. I think we have some people there in the
11 room. I couldn't hear.

12 MS. CLERGET: We don't need to get into
13 it right now, just for the purposes. I'll have a
14 meeting with the parties after the Board is
15 adjourned.

16 MR. FRANK: Okay. Very well.

17 CHAIR DEVENY: So that pretty much
18 concludes our action items today. I will open
19 this meeting up to public comment. The public is
20 allowed to comment on anything except for
21 contested cases, of which today is one. So are
22 there any issues that anybody wants to bring
23 before the Board besides contested cases?

24 MR. CHEREN: This is Robert Cheren from
25 Baker Hostetler. Can we clarify for purposes of

1 assignment. I mean this is a situation where we
2 might have to seek relief from a Court in an
3 expedited fashion. So you're saying we're going
4 to have a hearing today on the motion?

5 MS. CLERGET: Right after the Board
6 adjourns.

7 MR. CHEREN: Right after the Board
8 adjourns. Okay. Then we don't have anything
9 else. Thank you.

10 CHAIR DEVENY: Any other further public
11 comment?

12 (No response)

13 MS. HORNBEIN: Chris, this is Melissa
14 Hornbein. I apologize, but I and probably others
15 on the phone can't hear any of the comment. If
16 you wouldn't mind just paraphrasing, that would be
17 helpful.

18 CHAIR DEVENY: Paraphrasing what?

19 MS. HORNBEIN: What the comment was.

20 CHAIR DEVENY: The question just had to
21 do with whether or not, or how soon Sarah was
22 going to get together with the parties, and
23 they're going to meet right after our meeting.

24 MS. HORNBEIN: Okay. Thanks.

25 CHAIR DEVENY: I think we discovered

1 that the mike was off, so that should solve the
2 problem. Any other comments during this public
3 comment period process?

4 (No response)

5 CHAIR DEVENY: Hearing none or seeing
6 none, could I have a motion to adjourn this
7 meeting.

8 MS. HORNBEIN: I move to adjourn the
9 meeting.

10 CHAIR DEVENY: Any second?

11 MR. BUSBY: I'll second it. This is
12 Dexter.

13 CHAIR DEVENY: Any discussion about
14 adjourning the meeting?

15 (No response)

16 CHAIR DEVENY: Hearing none, all in
17 favor of adjourning the meeting, please signify by
18 saying aye.

19 (Response)

20 CHAIR DEVENY: Any opposed?

21 (No response)

22 CHAIR DEVENY: The meeting is adjourned.
23 Thank you for your time, everybody.

24 (The proceedings were concluded at 2:20 p.m.)

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STATE OF MONTANA)
: SS.
COUNTY OF LEWIS & CLARK)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 12 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 25th day of
May, 2019.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2020.

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