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
WHEREUPON, the following proceedings were had:

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

MS. FORD: Chris Deveny.

CHAIR DEVENY: Here.

MS. FORD: Dexter Busby.

(No response)

MS. FORD: Dexter Busby?

(No response)

MS. FORD: Hillary Hanson.

(No response)

MS. FORD: Hillary Hanson.

(No response)

MS. FORD: John DeArment.

MR. DEARMENT: Here.

MS. FORD: Chris Tweeten.

(No response)

MS. FORD: Chris Tweeten.

(No response)

MS. FORD: Melissa Hornbein.
(No response)

MS. FORD: Melissa Hornbein.

(No response)

MS. FORD: David Lehnherr.

MR. LEHNHERR: Here.

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

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

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

(No response)

(Off the record briefly)

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

(No response)

MS. FORD: Melissa Hornbein.

(No response)

MS. FORD: Melissa Hornbein.

MS. HORNBEIN: Hello.

MS. FORD: Melissa?

MS. HORNBEIN: Here.

MS. FORD: Why don't I go through the
roll one more time. Chris Deveny.

CHAIR DEVENY: Here.

MS. FORD: John DeArment.

MR. DEARMENT: Here.

MS. FORD: Melissa Hornbein.

MS. HORNBEIN: Hello.

MS. FORD: Melissa, was that you?

MS. HORNBEIN: Yes, it is.

MS. FORD: We can hear you now.

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


MR. LEHNHERR: Here.

MS. FORD: Dexter Busby.

(No response)

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

CHAIR DEVENY: Thank you, Lindsay.

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

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

MR. MATHIEUS: George Mathieus, Deputy Director and Board liaison.
MS. FORD: Lindsay Ford, Board secretary.

MS. DOMINGUEZ: Rosario Domiott Dominguez on behalf of Westmoreland Mining.

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

MR. CHEREN: Robert Cheren, Baker Hostetler.


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

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

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

MS. SCHERER: Sandy Scherer, DEQ.

MR. LUCAS: Mark Lucas, DEQ staff attorney.

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

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

CHAIR DEVENY: Thank you. I believe there is some other people on the phone. Are
there others on the phone who would please identify themselves.

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


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

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

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

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

    CHAIR DEVENY: Anybody else?

    MR. BUSBY: This is Dexter Busby.

    CHAIR DEVENY: Welcome, Dexter. You're the fifth Board member present now. Besides myself we have John DeArment, and David, and Melissa. I'd like to remind those people on the phone to please mute your phones so we don't have a lot of feedback, and also when you speak, to identify yourself so that our Court Reporter can get the record correct in the minutes.
All right. So the purpose of this meeting is two fold: First to open the case in the matter of the Major Facility Siting Act certificate for Colstrip Units 3 and 4 that were received by the Board on May 17th; and then the second part of our meeting will be to decide how we're going to consider the emergency motion that was filed by Westmoreland.

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

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

(No response)

CHAIR DEVENY: Don't all speak at once.

(No response)

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

MR. BUSBY: I'll second.

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

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

MR. BUSBY: Yes.

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

(No response)

CHAIR DEVENY: Hearing none --

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

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

CHAIR DEVENY: If there is no further discussion, let's have a vote on this motion. All those in favor of assigning the case in its
totality to Sarah, please signify by saying aye.

(Response)

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

(No response)

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

MS. CLERGET: Great.

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

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

CHAIR DEVENY: You have to do everything. Okay.

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

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

MS. CLERGET: All right. So in that case, I will contact the parties to determine how to proceed. So to the extent that all of the
parties are here, we can do that after this
meeting adjourns, if everybody is amenable to
that. And I would prefer if that meant
Westmoreland, DEQ; and I think if Talen, I don't
know if you plan on intervening or not, but if you
do, then please stay. So --

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

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

MR. FRANK: Okay. Very well.

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

MR. CHEREN: This is Robert Cheren from
Baker Hostetler. Can we clarify for purposes of
assignment. I mean this is a situation where we might have to seek relief from a Court in an expedited fashion. So you're saying we're going to have a hearing today on the motion?

MS. CLERGET: Right after the Board adjourns.

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

CHAIR DEVENY: Any other further public comment?

(No response)

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

CHAIR DEVENY: Paraphrasing what?

MS. HORNBEIN: What the comment was.

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

MS. HORNBEIN: Okay. Thanks.

CHAIR DEVENY: I think we discovered
that the mike was off, so that should solve the
problem. Any other comments during this public
comment period process?

(No response)

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

MS. HORNBEIN: I move to adjourn the
meeting.

CHAIR DEVENY: Any second?

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

CHAIR DEVENY: Any discussion about
adjourning the meeting?

(No response)

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

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: The meeting is adjourned.

Thank you for your time, everybody.

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

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CERTIFICATE

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.