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## ORDER

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As requested by Talen Montana LLC (Talen) by letter dated August 31, 2020, and pursuant to the Settlement Agreement also dated August 31, 2020, and attached hereto, the Montana Department of Environmental Quality (MDEQ) issues the following order in regard to Talen's request for 1) an administrative amendment removing reference to the coal loadout facility and any other conditions that were added in the 2019 modifications to its Montana Air Quality Permit (MAQP) issued pursuant to rules adopted under the Clean Air Act of Montana; and 2) rescission of the 2019 amendments to its Certificate of Environmental Compatibility and Public Need (Certificate) issued under Montana's Major Facility Siting Act. Talen has had two subsequent modifications to its MAQP since the 2019 modifications and, as a result its permit is currently denominated Montana Air Quality Permit No. 0513-13.

On March 13, 2019, MDEQ approved modifications to the MAQP held by Talen. Among other things, the modifications authorized Talen to construct a coal unloading facility to accommodate the use of coal obtained from certain mines other than the Rosebud Mine (collectively referred to as the 2019 MAQP modifications). As a result of the 2019 MAQP modifications, Talen's Montana Air Quality Permit was renumbered Montana Air Quality Permit No. 0513-11. Talen has obtained two subsequent modifications to their MAQP since the modifications made in 2019 and, as a result, its MAQP is now denominated as Montana Air Quality Permit No. 0513-13. In March of 2019, MDEQ received an application from Talen to amend its Certificate for Colstrip Units 3 and 4, seeking authorization to use non-Rosebud Coal obtained from certain mines other than the Rosebud Mine and to construct and operate the coal unloading facility that would be necessary to accommodate the use of the non-Rosebud Coal obtained from the mines. MDEQ subsequently approved the amendments on May 3, 2019 and May 10, 2019 (2019 MFSA Amendments).

ARM 17.8.764 authorizes MDEQ to amend a Montana Air Quality Permit for changes in operation at facilities that do not increase emissions. Removing the authorization for Talen to construct a coal unloading facility and to use non-Rosebud Coal can be accomplished through the Administrative Amendment process contained in ARM 17.8.764.

Regarding the 2019 MFSA Amendments, Talen has not taken any steps to implement the modifications to its operations authorized thereby. Talen has continued to exclusively use Rosebud seam coal obtained from the Rosebud Mine. Rosebud seam coal from the Rosebud Mine has been continued to be conveyed to the Colstrip Powerplant in the same

fashion that it was conveyed prior to the 2019 MFSA Amendments. Talen has not begun construction of the coal unloading facility that would have been necessary to accommodate the use of the non-Rosebud seam coal obtained from the other mines identified in the application leading to the 2019 MFSA Amendments.

Rescission of the 2019 MFSA Amendments would restore the Certificate to the *status quo ante*. The provisions of the Certificate that existed prior to the 2019 MFSA Amendment were subject to an environmental review under MEPA. Therefore, rescission of the 2019 MFSA Amendment would not result in any potential impact that was not already considered.

Furthermore, the 2019 MFSA Amendment did not require Talen to use only non-Rosebud Coal obtained from certain mines other than the Rosebud Mine or to construct the necessary load-out facility to accommodate the use of the non-Rosebud Mine. The 2019 MFSA Amendment was not issued as a way of bringing Talen into compliance with MFSA as no compliance issue prompted the application for, and approval of, the 2019 MFSA Amendment. Rather, the 2019 MFSA Amendment provide Talen the latitude, but did not require, the use of non-Rosebud Coal obtained from the identified mines. There would be no difference between Talen choosing to continue to exclusively use Rosebud Coal obtained from the Rosebud Mine and not to exercise the authority granted by the 2019 MFSA Amendment as compared to formal rescission of the 2019 MFSA Amendment.

Rescission of the 2019 MAQP Modifications and 2019 MFSA Amendment does not preclude Talen to apply for any new permit modifications or permit amendments in the future. Submission of applications for new permit modifications or permit amendments in the future, however, may require supplemental environmental review prior to MDEQ taking action on the applications.

Therefore, MDEQ hereby orders as follows:

1. Within 30 days of the final settlement agreement, DEQ shall issue its decision on the administrative amendment to Montana Air Quality Permit No. 0513-13 to remove references to the coal unloading facility, alternate coal, and any other provisions in the current MAQP directly related to the use of non-Rosebud coal that were added by the 2019 MAQP modifications. The administrative amendment shall not alter or impact any other provisions of the MAQP not directly related to the coal unloading facility and use of non-Rosebud coal at Colstrip Units 3 and 4.
2. MDEQ rescinds the 2019 MFSA Amendment. Talen's Certificate issued under the MFSA is hereby RESTORED to the *status quo ante*.

This action is taken pursuant to MDEQ's authority under Montana Code Annotated 2-4-603; A.R.M. 17.8.764; A.R.M. 17.20.1801; and such other powers as may be provided under applicable law.

Effective this 8th day of September, 2020.

A handwritten signature in black ink, appearing to read "David R. Hef". The signature is written in a cursive, somewhat stylized font.

Air Quality Bureau Chief

/s/: Rebecca Harbage, Public Policy Director      Sep. 8, 2020

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## SETTLEMENT AGREEMENT

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This Settlement Agreement is made by and between the Montana Department of Environmental Quality (“MDEQ”), Talen Montana, LLC (“Talen”), and Westmoreland Mining LLC and Westmoreland Rosebud Mining LLC (together, referred to as “Westmoreland”), and is effective as of the date it is signed by all Parties (“the Effective Date”).

WHEREAS, Talen operates Colstrip Units 3 and 4 tangential coal-fired boilers and associated equipment for the generation of electricity in Rosebud County, Montana;

WHEREAS, Westmoreland owns and operates the Rosebud Mine located adjacent to Colstrip and supplies coal from the Rosebud Mine to Colstrip for power generation;

WHEREAS, on March 13, 2019, MDEQ approved modifications to Talen’s Montana Air Quality Permit to, among other things, authorize construction of a coal unloading facility to accommodate the use of coal obtained from certain mines other than the Rosebud Mine (collectively referred to herein as the “2019 MAQP Modifications”). As a result of the 2019 MAQP modifications, Talen’s Montana Air Quality Permit was renumbered Montana Air Quality Permit No. 0513-11. Talen has obtained two subsequent modifications to its MAQP since the modifications made in 2019 and, as a result, its MAQP is now denominated as Montana Air Quality Permit No. 0513-13;

WHEREAS, MDEQ subsequently received an application from Talen to amend its Certificate of Environmental Compatibility and Public Need (the “Certificate”) for Colstrip Units 3 and 4, which were sited, constructed and are operated under the Certificate issued in 1976, as amended, under Montana’s Major Facility Siting Act (MFSA);

WHEREAS, MDEQ subsequently issued MFSA Amendments dated May 3, 2019 and May 10, 2019 that would allow Colstrip to use coal obtained from certain mines other than the Rosebud Mine and to construct a larger coal handling facility to enable Colstrip to receive and use coal from certain new sources (collectively referred to herein as the “2019 MFSA Amendments”);

WHEREAS, Westmoreland initiated a contested case proceeding before the Montana Board of Environmental Review to challenge the 2019 MFSA Amendments (styled as *In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC*, BER Case No. 2019-04 MFSA) (the “MFSA Proceeding”);

WHEREAS, Westmoreland filed a separate civil lawsuit in the Montana Sixteenth Judicial District challenging the MDEQ’s compliance with the Montana Environmental Policy Act (MEPA) when taking the aforementioned actions (Cause No. DV-2019-32, Montana Sixteenth Judicial District) (the “MEPA Proceeding”);

WHEREAS, the Parties subsequently reached agreement on a path forward that negates a need for further litigation in the MFSA Proceeding and the MEPA Proceeding (collectively, “the Contested Proceedings”);

WHEREAS, Talen has informed the Hearing Examiner that Talen will relinquish the 2019 MFSA Amendments;

WHEREAS, pursuant to the Hearing Examiner's Order of May 21, 2020, Talen shall initiate and complete, no later than August 31, 2020, the relinquishment or the rescission of the 2019 MFSA Amendments to restore the MFSA Certificate to the *status quo ante*, in a manner consistent with the requirements of Montana law, and without prejudice to Talen's right to seek new certificate amendments thereafter;

WHEREAS, upon completion of the relinquishment (or rescission) process, the Parties have agreed to, and have been ordered by the Hearing Examiner to, jointly move to dismiss the MFSA Proceeding on or before September 30, 2020;

WHEREAS, the MFSA Proceeding has otherwise been stayed, and Talen has agreed that Colstrip Units 3 and 4 shall not utilize any coal that was not authorized prior to the issuance of the certificate amendment during the pendency of the stay unless authorized by Westmoreland;

WHEREAS, Talen and Westmoreland aver that Westmoreland's commitment to dismiss the Contested Proceedings is based on Talen's commitment to relinquish the 2019 MFSA Amendment in full;

WHEREAS, Talen's commitment to relinquish the 2019 MFSA Amendment in full is based on Westmoreland's commitment that the Contested Proceedings will be dismissed and that the MFSA certificate for Colstrip Units 3 and 4 will be restored to the *status quo ante*; and

WHEREAS, the intent of these efforts is to return the Parties to their respective positions prior to the 2019 MFSA Amendments as if those amendments and the Contested Proceedings never occurred.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree as follows:

1. Within 10 days of the Effective Date, and following submittal of a written request by Talen, MDEQ shall issue an order (the "Rescission Order") in the form of Exhibit 1 that: (A) commits DEQ to issue a decision on the administrative amendment to Montana Air Quality Permit No. 0513-13 to remove references to coal unloading facilities, alternate coal, and any other provisions in the current MAQP directly related to the use of non-Rosebud coal that were added by the 2019 MAQP modifications; and (B) rescinds the 2019 MFSA Amendments and restores the MFSA certificate for Colstrip Units 3 and 4 to the *status quo ante*. It is the intent of the Parties that MDEQ complete the administrative amendment of the MAQP and rescission of the 2019 MFSA Amendments no later than August 31, 2020, or as soon thereafter as reasonably possible.
2. Not sooner than 15 days but not more than 30 days after MDEQ issues the Rescission Order in paragraph 1 above, the Parties shall jointly file with the Hearing Examiner in the MFSA

Proceeding a Stipulation of Voluntary Dismissal under Montana Rule of Civil Procedure 41(a) in the form of Exhibit 2, with each Party to bear its own costs, including but not limited to attorneys' fees. It is the intent of the Parties that this Stipulation of Voluntary Dismissal will be filed with the Hearing Examiner on or before September 11, 2020.

3. Upon filing of the Stipulation of Voluntary Dismissal, MDEQ shall promptly inform the Board of Environmental Review (or shall ensure that the Hearing Examiner has informed the Board of Environmental Review) that this contested case proceeding has been dismissed by stipulation of the Parties.
4. Within 10 days of dismissal of the MFSA Proceeding, Westmoreland shall take all appropriate and necessary steps to voluntarily dismiss the MEPA Proceeding, with each party to bear its own costs, including but not limited to attorneys' fees.
5. The rescission of the 2019 MFSA Amendments and the administrative amendment to Montana Air Quality Permit No. 0513-13 is without prejudice to Talen's right to apply for any new certificate amendments or permit modifications in the future, without prejudice to MDEQ's ability to issue certificate amendments or permit modifications to Talen, and without prejudice to Westmoreland's right to challenge such certificate amendments or permit modifications.
6. Westmoreland and Talen mutually agree that neither will file any administrative or judicial appeal of, or challenge to, the Rescission Order.
7. If any third party files an administrative or judicial challenge to the Rescission Order, the Parties agree to (A) promptly meet and confer concerning said challenge; and (B) take reasonable and appropriate steps to preserve the intent of this Agreement, including but not limited to defending the Rescission Order against said challenge. To the extent any final judicial order by a court of competent jurisdiction vacates (or affirms the vacatur of) the Rescission Order (or otherwise materially alters the Rescission) and all reasonable appeals have been exhausted such that the intent of this Agreement is no longer preserved, the Parties agree to evaluate alternative mechanisms to rescind the 2019 MFSA Amendments and to take actions to rescind the 2019 MFSA Amendments in accordance with the intent of this Agreement. If the Parties do not agree on any alternative actions to rescind the 2019 MFSA Amendments, Westmoreland may commence contested proceedings challenging the 2019 MFSA Amendments and, in that event, Talen and MDEQ expressly agree that defenses or objections based on statute of limitations or laches are waived, except for those defenses/objections that existed and were asserted prior to the execution of this Agreement. However, should the 2019 MFSA Amendments successfully be rescinded at any time prior to a final order on such contested proceedings, Westmoreland agrees to dismiss such proceedings with prejudice within 10 days. For purposes of the sentence immediately preceding this one, "successfully be rescinded" shall mean that the action rescinding the 2019 MFSA Amendments shall become final either by: (a) the time for bringing administrative or judicial challenge passing without any challenge being brought; or (b) any administrative or judicial challenge to the Rescission Order being resolved in favor of rescission with the time for appeal exhausted.

8. This Settlement Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements or understandings. The obligations contained in this Settlement Agreement may only be modified or amended by written agreement executed by the Parties.
9. This Settlement Agreement may be signed in counterpart copies which together shall constitute a fully-executed agreement.

Executed this 31<sup>st</sup> day of August, 2020.

*/s/ Rebecca Harbage, Public Policy Director*

*August 31, 2020*

\_\_\_\_\_  
On Behalf of Montana Department of Environmental Quality

*[Handwritten Signature]*  
\_\_\_\_\_  
On Behalf of Westmoreland Mining LLC and Westmoreland Rosebud Mining LLC

*[Handwritten Signature]*  
\_\_\_\_\_  
On Behalf of Talen Montana, LLC

*8/31/20*

## EXHIBIT 1

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### ORDER

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As requested by Talen Montana LLC (Talen) by letter dated [insert] and pursuant to the Settlement Agreement dated [insert] and attached hereto, the Montana Department of Environmental Quality (MDEQ) issues the following order in regard to Talen's request for 1) an administrative amendment removing reference to the coal loadout facility and any other conditions that were added in the 2019 modifications to its Montana Air Quality Permit (MAQP) issued pursuant to rules adopted under the Clean Air Act of Montana; and 2) rescission of the 2019 amendments to its Certificate of Environmental Compatibility and Public Need (Certificate) issued under Montana's Major Facility Siting Act. Talen has had two subsequent modifications to its MAQP since the 2019 modifications and, as a result its permit is currently denominated Montana Air Quality Permit No. 0513-13.

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ARM 17.8.764 authorizes MDEQ to amend a Montana Air Quality Permit for changes in operation at facilities that do not increase emissions. Removing the authorization for Talen to construct a coal unloading facility and to use non-Rosebud Coal can be accomplished through the Administrative Amendment process contained in ARM 17.8.764.

Regarding the 2019 MFSA Amendments, Talen has not taken any steps to implement the modifications to its operations authorized thereby. Talen has continued to exclusively use Rosebud seam coal obtained from the Rosebud Mine. Rosebud seam coal from the Rosebud Mine has been continued to be conveyed to the Colstrip Powerplant in the same fashion that it was conveyed prior to the 2019 MFSA Amendments. Talen has not begun construction of the coal unloading facility that would have been necessary to accommodate the use of the non-Rosebud seam coal obtained from the other mines identified in the application leading to the 2019 MFSA Amendments.

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2. MDEQ rescinds the 2019 MFSA Amendment. Talen's Certificate issued under the MFSA is hereby RESTORED to the *status quo ante*.

This action is taken pursuant to MDEQ's authority under Montana Code Annotated 2-4-603; A.R.M. 17.8.764; A.R.M. 17.20.1801; and such other powers as may be provided under applicable law.

Effective this \_\_\_ day of August, 2020.

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[authorized official at MDEQ] [Air Quality]

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[authorized official at MDEQ] [MEPA]

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

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IN THE MATTER OF THE  
APPLICATION FOR AN  
AMENDMENT OF A MAJOR  
FACILITY SITING ACT  
CERTIFICATE BY TALEN  
MONTANA, LLC

BER 2019-04 MFSA

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**JOINT STIPULATION OF VOLUNTARY DISMISSAL**

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COME NOW Westmoreland Mining LLC and Westmoreland Rosebud Mining LLC, Montana Department of Environmental Quality, and Talen Montana, LLC, by and through their undersigned counsel, and hereby stipulate to the dismissal of this contested case proceeding under Montana Rule of Civil Procedure 41(a), with each party to bear its own costs, including but not limited to attorneys' fees.

Dated this -- day of September, 2020.

/s/ \_\_\_\_\_  
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Joshua B. Frank  
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/s/ \_\_\_\_\_  
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*/s/ Edward Hayes*

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*Counsel for Westmoreland Mining LLC  
and Westmoreland Rosebud Mining  
LLC*

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on the following, via email, on the -- day of September, 2020:

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Hearing Examiner, Agency Legal Services Bureau

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/s/ \_\_\_\_\_