

**EXH. RJR-28
DOCKET UE-22 ___/UG-22 ___
2022 PSE GENERAL RATE CASE
WITNESS: RONALD J. ROBERTS**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-22 ___
Docket UG-22 ___**

**TWENTY-SEVENTH (NONCONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF**

RONALD J. ROBERTS

ON BEHALF OF PUGET SOUND ENERGY

JANUARY 31, 2022

Settlement Agreement

This settlement agreement (“Agreement”) is entered into by and between Talen Montana, LLC, formerly known as PPL Montana, LLC (“Talen Montana”) and the Montana Department of Environmental Quality (“MDEQ”) (collectively, the “Parties”). The Effective Date of this Agreement is set forth in Paragraph XV.A.

I. Recitation of Relevant Background:

- A. On August 3, 2012, the Parties entered an Administrative Order on Consent Regarding Impacts Related to Wastewater Facilities Comprising the Closed-Loop System at Colstrip Steam Electric Station (“CSES”), Colstrip, Montana (“2012 AOC”). Talen Montana executed the 2012 AOC in its capacity as operator of CSES.
- B. Pursuant to the 2012 AOC, in July 2017 Talen Montana submitted a CSES Wastewater Facility Closure Plan for the Units 1 & 2 Stage One and Two Evaporation Pond (“SOEP/STEP”) Site, which Talen Montana revised in January 2018 in response to MDEQ comments. In September 2018, Talen Montana submitted another revised CSES Wastewater Facility Closure Plan for the SOEP/STEP Site (the “2018 SOEP/STEP Closure Plan”), which was subsequently conditionally approved by MDEQ on December 3, 2018. The 2018 SOEP/STEP Closure Plan was subsequently updated in February 2019 (the “2019 SOEP/STEP Closure Plan”). The 2018 and 2019 SOEP/STEP Closure Plans contemplated that the SOEP/STEP units with coal combustion residuals had been or would be capped and closed in place.
- C. Pursuant to the 2012 AOC, on November 17, 2020, MDEQ issued a letter to Talen Montana pursuant to which MDEQ (1) selected a remedy for the CSES SOEP/STEP Area (as defined in Section III of this Agreement) and (2) requested financial assurance in the amount of \$285,438,000.00 for the selected remedy. MDEQ’s selected remedy is “Alternative 10,” and it involves complete excavation and removal of SOEP/STEP ash to a new landfill to be constructed at CSES.
- D. Pursuant to Article XIII of the 2012 AOC, on December 17, 2020 Talen Montana invoked dispute resolution by written letter to MDEQ (“Notice of Dispute Resolution”). Talen Montana invoked dispute resolution both as to MDEQ’s selection of Alternative 10, and as to MDEQ’s request for \$285,438,000.00 in financial assurance.
- E. On December 17, 2020, Talen Montana filed a Notice of Contest and Request for Hearing with the Board of Environmental Review (“Notice of Contest”). The matter was docketed as *In the matter of the selection of a remedy and setting of financial assurance for the Colstrip Steam Electric Station Units 1 & 2 by the Montana Department of Environmental Quality*, Case No. BER 2020-07

MFSA/WQA. Case No. BER 2020-07 MFSA/WQA was stayed pending resolution of the dispute resolution process described in Paragraph I.D of this Agreement.

- F. On June 22, 2021, the Parties signed a non-binding agreement-in-principal identifying the terms that, if incorporated into a final settlement and signed by an authorized representative for Talen Montana and the MDEQ Director, would resolve Talen Montana's Notice of Dispute Resolution and Notice of Contest.

In light of the foregoing, the Parties agree to the following:

II. Addendum to 2012 AOC

- A. This Agreement is an addendum to the Administrative Order on Consent Regarding Impacts Related to Wastewater Facilities Comprising the Closed-Loop System at Colstrip Steam Electric Station, Colstrip, Montana ("2012 AOC"). Specifically, this Agreement provides procedures for further evaluation of a single additional remedial alternative identified in Sections III and V ("Alternative 11A") while otherwise proceeding with work related to Alternative 10 identified in Section VI.
- B. Except where inconsistent with the terms of this Agreement, the 2012 AOC remains in full force and effect.
- C. Talen Montana is entering this Agreement as an addendum to the 2012 AOC on behalf of the owners of CSES Units 1 & 2.

III. Definitions

- A. The **2012 AOC** shall mean the August 3, 2012, Administrative Order on Consent Regarding Impacts Related to Wastewater Facilities Comprising the Closed-Loop System at Colstrip Steam Electric Station, Colstrip, Montana, as amended March 1, 2017.
- B. **Alternative 10** shall mean the complete excavation remedial alternative for the SOEP/STEP Area described in Talen Montana's September 2020 Units 1 & 2 Stage I and II Evaporation Ponds Revised Remedy Evaluation – Integrated Report ("September 2020 Integrated Remedy Report") Section 6.4 involving relocation of all SOEP/STEP ash to a new lined landfill on Talen Montana's current CSES property as described in Section 6.4.1.
- C. **Alternative 11A** shall mean the single additional remedial alternative described in Section V and summarized in Attachment A.
- D. The **Effective Date** of this Agreement is defined in Paragraph XV.A.
- E. **Final Decision on Request to Amend** shall mean MDEQ's final selection of Alternative 10 or Alternative 11A pursuant to the procedures set forth in Section VII and Section XI of this Agreement.

- F. **Remedial Design/Remedial Action Work Plan** shall mean the Remedial Design/Remedial Action Work Plan identified in 2012 AOC Article VI.D.1 for the SOEP/STEP Area.
- G. **Remedial Design/Remedial Action Work Plan Proposal** shall mean the document described in Paragraph VI.A.1(a) of this Agreement, and shall include the approach and schedule for the development of the Remedial Design/Remedial Action Work Plan and related deliverables, as well as project background and purpose, a current description of the remedial approach and remedy components, identification of data gaps and proposed activities to address such gaps, and a detailed description of the work to be performed as part of the process to complete the Remedial Design/Remedial Action Work Plan.
- H. **Request to Amend Due Date** shall be two years from the Effective Date of this Agreement.
- I. **Request to Amend Remedy Selection (“Request to Amend”)** shall mean the petition by Talen Montana to MDEQ to change the SOEP/STEP Area remedy selection pursuant to the processes set forth in this Agreement.
- J. **SOEP/STEP** shall mean Colstrip Steam Electric Station Units 1 & 2 Stage One and Stage Two Evaporation Ponds northwest of the main plant site.
- K. **SOEP/STEP Area** shall mean areas at and downgradient of the SOEP/STEP, as specified in Article III.A.1 of the 2012 AOC.

IV. MDEQ Remedy Selection for the CSES SOEP/STEP Area

- A. MDEQ retains its November 17, 2020, decision under 2012 AOC Article VI.C.3 selecting Alternative 10 as the remedy for the CSES SOEP/STEP Area, but Talen Montana may further evaluate a single additional remedial alternative identified in Section V below and may petition MDEQ to change the SOEP/STEP Area remedy (“Request to Amend”) by the Request to Amend Due Date of two years from the Effective Date of this Agreement. MDEQ’s November 17, 2020 decision related to the financial assurance requirements associated with Alternative 10 is superseded by the provisions set forth in Section IX of this Agreement.

V. Development by Talen Montana of Alternative Remedy

- A. The single additional remedial alternative (“Alternative 11A”) Talen Montana may further evaluate pursuant to this Agreement will involve excavation and consolidation of the SOEP/STEP ash above the groundwater in a manner conceptually similar to Alternative 11 as presented in Talen Montana’s September 2020 Integrated Remedy Report. Attachment A is a summary of Alternative 11A submitted by Talen Montana to MDEQ on September 30, 2021, which shall serve as the basis for the single additional remedial alternative contemplated by this Agreement. Subject to Paragraphs V.B and V.C, the precise movement and ultimate location of ash during the consolidation process may be refined in the

development and further analysis of Alternative 11A during the two-year period identified in Paragraph VI.A.

- B. Talen Montana will be permitted to make additional refinements to Alternative 11A based on additional information developed and/or changes in applicable laws or regulations during the two-year period identified in Paragraph VI.B prior to submission of the Request to Amend.
- C. Talen Montana will also be permitted to make additional refinements to Alternative 11A in response to any concerns or comments identified by MDEQ during the Request to Amend process described in Section VII.

VI. Conduct of Remedial Design Work

- A. During the two-year period following the Effective Date of this Agreement, Talen Montana shall work on the elements of the Remedial Design/Remedial Action Work Plan identified in 2012 AOC Article VI.D.1 for Alternative 10, such that remedy implementation is not delayed by the procedures in this Agreement. Specifics are to be worked out during the consultation process and quarterly meetings described in Paragraph VII.B, but at a minimum, Talen Montana shall submit the following to MDEQ by the deadlines listed below:
 - 1. For the SOEP/STEP Area Remedial Design/Remedial Action Work Plan required by 2012 AOC Article VI.D.1:
 - (a) By January 31, 2022, a Remedial Design/Remedial Action Work Plan Proposal;
 - (b) Within 18 months of the Effective Date of this Agreement, a Remedial Design/Remedial Action Work Plan; and
 - (c) Within two years of the Effective Date of this Agreement, a draft application for a state license from MDEQ under Title 75, chapter 10, part 2, MCA, to construct and operate the landfill as contemplated for Alternative 10. The license application is not required to be formally submitted by this date, but a draft shall be provided to MDEQ for review within the two-year period and may be discussed in advance during the quarterly meetings described in Paragraph VII.B. Nothing in this Agreement prohibits Talen Montana from submitting an application to construct and operate the landfill at an earlier date within the two-year period. This Paragraph applies to a state landfill license only and does not obligate Talen Montana to submit to MDEQ any other draft permit or other application under local, state, or federal law within the timeframes of this Paragraph. In addition, in the event that the Parties later agree that a state license is not required for Alternative 10, this Paragraph shall no longer apply and Talen Montana will not be subject to

stipulated penalties for failure to prepare a draft application for a state license.

2. By April 1, 2022, an Amended Facility Closure Plan for the SOEP/STEP Area revising the 2018 and 2019 SOEP/STEP Closure Plans. The Amended Facility Closure Plan shall note that it may be subject to further revision depending on the outcome of the Request to Amend Remedy Selection process described in this Agreement.
- B. In addition, during the two-year period following the Effective Date of this Agreement, Talen Montana shall work on the elements of the Remedial Design/Remedial Action Work Plan for Alternative 11A as long as Alternative 11A remains under consideration under Section VII of this Agreement. Talen Montana's work shall proceed such that the Remedial Design/Remedial Action Work Plan identified 2012 AOC Article VI.D.1 may be submitted with the Request to Amend. If Talen Montana opts under Paragraph XIV.B of this Agreement to cease evaluation of Alternative 11A at any point before the Request to Amend Due Date, any obligation to continue work related to the Remedial Design/Remedial Action Work Plan for Alternative 11A shall cease.
 - C. MDEQ shall make a good faith effort to respond in writing to the Remedial Design/Remedial Action Work Plan Proposal identified in Paragraph VI.A.1(a) within 75 days, and identify the MDEQ's substantive concerns, if any, or provide MDEQ's approval, conditional approval, or disapproval. If MDEQ takes longer than 75 days to respond in writing to the Remedial Design/Remedial Action Work Plan Proposal, the deadline for Talen Montana to submit the Alternative 10 Remedial Design/Remedial Action Work Plan identified in Paragraph VI.A.1(b) shall be extended by the same number of additional days taken by MDEQ, and the stipulated penalties identified in Section XIII of this Agreement will not accrue unless Talen Montana fails to meet the deadline as revised by this Paragraph.
 - D. Prior to issuance of a Final Decision on Request to Amend, Talen Montana shall continue to implement those actions in Talen Montana's Revised Remedy Evaluation Report – Part 1, conditionally approved by MDEQ on June 8, 2020, subsequently adjusted based on a small-scale pilot test, and any other implementation activities otherwise applicable to both Alternative 10 and Alternative 11A. Talen Montana is also obligated to act in good faith and use reasonable efforts to timely pursue acquisition of any additional applicable local, state, or federal approvals while a Request to Amend remains pending.
 - E. Except as stated in Paragraph VI.D, prior to issuance of a Final Decision on Request to Amend, Talen Montana shall not be obligated to conduct any of the following activities associated with the implementation of Alternative 10: (1) construction of a new landfill, and/or (2) excavation or transport of any materials from the SOEP/STEP Area. If Talen Montana opts under Paragraph XIV.B of this Agreement to cease evaluation of Alternative 11A, this Paragraph no longer applies

and Talen Montana shall implement Alternative 10 in accordance with the 2012 AOC.

VII. Process for Request to Amend Remedy from Alternative 10 to Alternative 11A

- A. At any point within two years following the Effective Date of this Agreement, Talen Montana may petition MDEQ to change the SOEP/STEP Area remedy from Alternative 10 to Alternative 11A by submitting to MDEQ a Request to Amend Remedy Selection (“Request to Amend”). The Request to Amend must be received by the Request to Amend Due Date. If Talen Montana does not submit the Request to Amend by the Request to Amend Due Date, this Section no longer applies and Talen Montana shall implement Alternative 10 in accordance with the 2012 AOC; however, as long as a Request to Amend is submitted in good faith and within two years, any assertion by MDEQ that a Request to Amend is incomplete shall not be the basis to determine that this Section no longer applies.
- B. Prior to submission of the Request to Amend, MDEQ and Talen Montana shall meet quarterly to discuss (1) progress on the work identified in Section VI of this Agreement, (2) substantive factors identified in Section VIII of this Agreement, and (3) additional information developed related to Alternative 11A and/or related to a comparison between Alternative 10 and Alternative 11A. The Parties may meet more or less frequently upon agreement by both Parties.
- C. The Request to Amend shall include, at minimum, the following:
 - 1. Relevant information identified in 2012 AOC Article VI.C.2 related to the contents of a remedy evaluation report;
 - 2. The Remedial Design/Remedial Action Work Plan identified in 2012 AOC Article VI.D.1 for Alternatives 10 and 11A (the Alternative 10 Remedial Design/Remedial Action Work Plan previously submitted pursuant to Paragraph VI.A.1(b) may be incorporated by reference); and
 - 3. Discussion of the factors identified in Section VIII of this Agreement.
- D. Following Talen Montana’s submission of the Request to Amend, MDEQ shall, within 120 days, respond in writing with either of the following:
 - 1. A detailed statement to Talen Montana identifying with specificity any concerns, questions, or comments related to the Request to Amend or Alternative 11A, including any concerns, questions, or comments related to the evaluation of the factors identified in Section VIII of this Agreement; or
 - 2. If MDEQ believes it has sufficient information, a written preliminary decision approving Talen Montana’s Request to Amend and selecting Alternative 11A to replace Alternative 10 as the selected remedy for the SOEP/STEP Area. The preliminary approval must include a detailed statement of MDEQ’s basis for decision and a preliminary evaluation of the

factors identified in Section VIII of this Agreement, in which case the procedures identified in Paragraphs VII.E and F do not apply.

- E. In the event MDEQ responds with the detailed statement identified in Paragraph VII.D.1, Talen Montana may, within 60 days, provide a written response to MDEQ's concerns, questions, and/or comments, and may also submit a Revised Request to Amend if appropriate. At Talen Montana's request, the Parties shall hold a meeting during this 60-day period to discuss MDEQ's concerns, questions, and/or comments.
- F. Following Talen Montana's written response and, if submitted, the Revised Request to Amend described in Paragraph VII.E, MDEQ shall, within 120 days, issue either of the following in writing:
 - 1. A written preliminary decision approving Talen Montana's Request to Amend and selecting Alternative 11A to replace Alternative 10 as the selected remedy for the SOEP/STEP Area. The preliminary approval must include a detailed statement of MDEQ's basis for decision and a preliminary evaluation of the factors identified in Section VIII of this Agreement; or
 - 2. A written preliminary decision denying Talen Montana's Request to Amend, including a detailed statement of MDEQ's basis for decision and a preliminary evaluation of the factors identified in Section VIII of this Agreement. A preliminary denial must be based on concerns, questions, or comments identified by MDEQ in its detailed statement identified under Paragraph VII.D.1, or concerns, questions, or comments MDEQ otherwise identified to Talen Montana and for which Talen Montana has been provided an opportunity to respond prior to MDEQ's issuance of a written preliminary denial.
- G. Any preliminary decision issued by MDEQ pursuant to Paragraphs VII.D.2, VII.F.1, or VII.F.2 shall be subject to the following public participation requirements:
 - 1. Within 10 days of the decision's issuance, MDEQ shall post its preliminary decision on its website and a notice to the public of a 30-day period within which to comment on the Request to Amend (or Revised Request to Amend) and preliminary decision.
 - 2. MDEQ shall also set a public meeting on the Request to Amend (or Revised Request to Amend) and preliminary decision and publish a notice of the meeting on its website and in the local newspaper and the Billings Gazette. The public meeting must be held at least 10 days prior to the close of the public comment period. MDEQ may extend the public comment period to accommodate the public meeting. MDEQ shall conduct the public meeting. MDEQ will respond to substantive public comment as part of its final action on the Request to Amend (or Revised Request to Amend).

- H. Following the public participation procedures described in Paragraph VII.G, MDEQ shall issue a written decision on the Request to Amend within 60 days of the close of the public comment period. Prior to issuing a written decision but after public comments are received, MDEQ shall provide Talen Montana with a copy of the public comments and at least 21 days for Talen Montana to provide responses to MDEQ regarding the public comments submitted by other entities. In addition, if Talen Montana makes a reasonable request for a meeting the Parties shall hold a meeting to discuss the public comments prior to issuance to MDEQ's written decision. MDEQ retains the responsibility to respond to all public comments in its issuance of a written decision.
- I. Any written decision described in Paragraph VII.H shall not be final until Talen Montana's right to invoke dispute resolution under Section XI of this Agreement has expired, or until the completion of dispute resolution if timely invoked by Talen Montana. MDEQ's written decision will be marked as "Not Final – Subject to Dispute Resolution" until dispute resolution is complete or the option to invoke dispute resolution has expired. If the option to invoke dispute resolution expires without timely invocation by Talen Montana, the written decision described in Paragraph VII.H shall become the Final Decision on Request to Amend.
- J. The timeframes identified in this Section can be extended by mutual agreement of the Parties. In the event Talen Montana submits the Request to Amend significantly in advance of the of the two-year deadline, Talen Montana will agree to reasonable requests from MDEQ for additional time to respond under Paragraph VII.D.

VIII. Substantive Factors to be Considered in Evaluating Request to Amend Remedy

- A. In evaluating whether to grant the Request to Amend pursuant to the procedures set forth in Section VII of this Agreement, MDEQ shall compare and assess Alternative 10 and Alternative 11A based on the factors, evidence, and criteria set forth in Paragraphs VIII.B and VIII.C. This evaluation shall include consideration of information developed both before and after the September 2020 Integrated Remedy Report related to both Alternative 10 and Alternative 11A.
- B. MDEQ's evaluation of the Request to Amend shall include consideration of the same criteria MDEQ used to make other remedy decisions under the 2012 AOC, including:
 - 1. The comparative effectiveness and reliability of both alternatives in meeting the groundwater cleanup criteria under Articles IV.G and VI.B of the 2012 AOC in the short term and long term, including the ability of the alternatives to permanently achieve the groundwater cleanup criteria. If neither alternative is projected to achieve applicable groundwater cleanup criteria at the point of compliance at the end of the modeling period (at the year 2150), effectiveness and permanence shall be based on projected plume extent and stability after capture system shutdown.

2. Compliance of the alternatives with the 2012 AOC, the Montana Water Quality Act, the Montana Major Facility Siting Act, other state law, the federal Coal Combustion Residuals Rule contained at 40 C.F.R. § 257.50 *et seq.*, and any other applicable laws and regulations.
 3. As part of the evaluation of compliance with the Montana Water Quality Act, the extent to which each alternative is expected to achieve permanent separation of ash and the groundwater table.
- C. MDEQ shall also consider the following other factors:
1. The technical practicability and implementability of the alternatives.
 2. If both alternatives are sufficiently protective, the cost-effectiveness of the alternatives.
 3. Proposed institutional controls, consistent with 2012 AOC Articles I.M, IV.C, VI.C.2, and VI.E.
- D. To evaluate permanence under Paragraphs VIII.B.1 and VIII.B.3, and any additional factors MDEQ identifies pursuant to Paragraph VIII.E of this Section, the following must be submitted by Talen Montana and considered by MDEQ as part of the Request to Amend process identified in Section VII of this Agreement:
1. Modeling data and analysis related to groundwater levels and cleanup performance.
 - (a) Further discussion of the details and scope of the modeling work to be worked out during the consultation process and quarterly meetings described in Paragraph VII.B, and may include adjacent groundwater data outside the SOEP/STEP Area that may inform remedy permanence and selection. Groundwater modeling files, parameters, and calibration analysis shall be supplied to MDEQ as an addendum to the Request to Amend submittal.
 - (b) If MDEQ disagrees with model conclusions submitted by Talen Montana or its consultant(s), it must identify specific elements and basis for disagreement in its detailed response described in Paragraph VII.D.1, and provide Talen Montana with an opportunity to respond as part of the response described in Paragraph VII.E and, if appropriate, make adjustments to the groundwater modeling. Talen Montana shall provide all model files to MDEQ within a reasonable timeframe if requested by MDEQ.
 2. Existing groundwater data and any additional groundwater data collected during the two-year period prior to the submission of the Request to Amend.

3. Safety factor, slope stability, and short- and long-term geotechnical stability analysis of all earthmoving activities or earthen structures (including predictive analysis of settlement and any further ash characterization analysis).
 4. Dam breach analysis for any structure that would hold back very low or no-strength soils or impounded water, with further details regarding the scope and methodology for this analysis to be worked out during the consultation process and quarterly meetings described in Paragraph VII.B.
 5. Flood studies of the permanent land formed area, including stormwater and surface water controls, with further details regarding the scope and methodology for this analysis to be worked out during the consultation process and quarterly meetings described in Paragraph VII.B.
 6. The parameters and metrics that are expected to be used to monitor the effectiveness of the remedies.
 7. An evaluation of the ease of implementing additional remedial actions if necessary and appropriate.
- E. MDEQ reserves the right to consider other factors and evidence not listed in Paragraphs VIII.B and VIII.C that are not apparent as of the Effective Date of this Agreement, but such factors and evidence shall be limited to those related to the efficacy, safety, efficiency, and cost of the remedial alternatives or other factors or evidence relevant to the criteria set forth in Paragraphs VIII.B, VIII.C, and VIII.D. MDEQ agrees to provide Talen Montana notice and at least 60 days to address any additional factors and/or evidence identified by MDEQ. Should MDEQ provide Talen Montana with notice of additional factors and/or evidence less than 60 days before Talen Montana's deadline to submit a Request to Amend, then the deadline to submit a Request to Amend shall be extended to 60 days from the date of MDEQ's notice. MDEQ shall provide Talen Montana with notice of additional factors and/or evidence no later than the deadline for MDEQ's detailed statement identified in Paragraph VII.D.1. If MDEQ includes additional factors and/or evidence in the detailed statement identified in Paragraph VII.D.1, MDEQ shall also describe its analysis and application of those factors and/or evidence such that Talen Montana can respond both to the factors and/or evidence and the application of those factors and/or evidence in the response described in Paragraph VII.E.
- F. Nothing herein shall preclude MDEQ from considering potential beneficial uses in evaluating whether to grant the Request to Amend and comparing Alternative 10 and Alternative 11A. MDEQ is not required to go through the procedures identified in Paragraph VIII.E to consider potential beneficial uses.

IX. Financial Assurance

- A. The total amount of financial assurance for Alternative 10 shall be posted in the amount of \$163,324,678.99 within 60 days after the Effective Date of this

Agreement. This is the amount of total financial assurance required for Alternative 10 and does not account for the \$43,213,270.00 in financial assurance already submitted for the SOEP/STEP Area. Therefore, the additional amount of financial assurance to be posted within 60 days is \$120,111,408.99.

- B. All financial assurance amounts under the 2012 AOC, including the financial assurance amount described in Paragraph IX.A of this Agreement, remain subject to annual review under Article VIII of the 2012 AOC. In the event MDEQ disagrees with an estimate provided by Talen Montana under Article VIII of the 2012 AOC, MDEQ shall identify specific elements of disagreement and the basis for the disagreement and shall provide Talen Montana with an opportunity to respond before MDEQ requests an updated financial assurance amount.
- C. In the event MDEQ ultimately changes the remedy selected for the SOEP/STEP Area in response to a request from Talen Montana under either Section VII or Section XIV of this Agreement, or otherwise changes the remedy selected, the amount of financial assurance posted will be updated to reflect the estimated cost of the selected remedy within 60 days.
- D. Any disagreement as to the amount of financial assurance related to the SOEP/STEP Area remedy under this Agreement shall be subject to the dispute resolution provisions in Section XI of this Agreement unless otherwise agreed to by the Parties.

X. MDEQ Review Costs

- A. Talen Montana shall pay for MDEQ's costs associated with MDEQ's consideration of the Request to Amend as well as any additional proposals submitted under Paragraph XIV.A of this Agreement.

XI. Dispute Resolution Procedures Applicable to Decisions Under this Settlement

- A. The following procedures are applicable only to decisions under this Agreement and replace the dispute resolution provisions in Article XIII of the 2012 AOC solely for decisions identified in Paragraph XI.B.
- B. Talen Montana shall have the right to invoke dispute resolution regarding issuance of MDEQ's written decision on a Request to Amend under Paragraph VII.H, any other related decision as to the amount of financial assurance related to the SOEP/STEP Area, any selection of new factors and/or evidence pursuant to Paragraph VIII.E, and assessment of stipulated penalties under Section XIII.
- C. To invoke dispute resolution under Paragraph XI.A, Talen Montana must provide brief written notice to MDEQ within 15 days of the date of MDEQ's contested decision. Talen Montana will then have 30 days from the date of its initial notice

invoking dispute resolution to provide MDEQ with a statement identifying the matters and issues for which it is invoking dispute resolution.

- D. Failure to submit either the written notice or the statement described in Paragraph XI.C within the timeframes described in that Paragraph shall render Talen Montana's invocation of dispute resolution ineffective and shall preclude any appeal of the disputed decision under Section XII or the 2012 AOC. As long as the written notice and statement described in Paragraph XI.C are timely submitted, however, any assertion by MDEQ that either or both documents are incomplete shall not be the basis to render Talen Montana's invocation of dispute resolution ineffective or preclude any further appeal by Talen Montana.
- E. Dispute resolution under this Agreement shall require non-binding mediation conducted by a mediator mutually agreeable to MDEQ and Talen Montana.
- F. The schedule for mediation will be set by agreement of MDEQ, Talen Montana, and the mediator selected pursuant to Paragraph XI.E.
 - 1. For dispute resolution invoked in relation to a written decision by MDEQ on a Request to Amend under Paragraph VII.H, dispute resolution under this Section shall be completed by issuance of the Director's Final Decision on Request to Amend under Paragraph XI.G within four months of the submission of Talen Montana's brief written notice under Paragraph XI.C.
 - 2. For dispute resolution invoked in relation to stipulated penalties or any other matter under this Agreement other than a written decision by MDEQ Request to Amend, dispute resolution under this Section shall be completed by issuance of the Director's final decision under Paragraph XI.G within two months of the submission of Talen Montana's brief written notice under Paragraph XI.C.
 - 3. These deadlines may be extended by mutual agreement of the parties.
- G. Immediately upon the conclusion of the mediation process, the mediator shall issue a mediator's report to MDEQ and Talen Montana. If MDEQ and Talen Montana resolve the dispute in mediation, they shall prepare a settlement agreement. If the MDEQ and Talen Montana do not resolve the dispute in mediation, the MDEQ Director shall issue a final decision. For dispute resolution invoked in relation to a Request to Amend, the final decision issued by the MDEQ Director shall be considered the Final Decision on Request to Amend. A Final Decision on Request

to Amend issued by the MDEQ Director may include modifications from the written decision identified in Paragraph VII.H.

- H. Payment for the costs of the mediator selected under Paragraph XI.E of this Agreement will be the responsibility of Talen Montana.
- I. Nothing herein shall preclude the Parties from mutually agreeing to modify the dispute resolution process or schedule set forth in this Section.

XII. Appeals

- A. Upon conclusion of the dispute resolution process in Section XI, Talen Montana shall have the same appeal rights under the 2012 AOC and applicable state and federal law as any other MDEQ decision issued under the 2012 AOC; provided, however, nothing in this Paragraph shall be interpreted to limit, expand and/or provide appeal rights.
- B. Completion of the dispute resolution process in Section XI is a mandatory prerequisite to the appeal of any decision subject to that Section. Failure to invoke the dispute resolution process in Section XI for any decision subject to that Section shall preclude any appeal of that decision.

XIII. Delay in Performance/Stipulated Penalties

- A. Unless there has been a written modification by MDEQ of a compliance date or excusable delay under the terms of 2012 AOC Article XVII, *Force Majeure*, Talen Montana agrees to pay stipulated penalties in the amount of \$500 per day for each day it fails to submit any of the four documents identified in Paragraphs VI.A.1-2 by the deadlines identified in those Paragraphs.
- B. MDEQ retains discretion to reduce or forgive any stipulated penalties that may be assessed under this Section.
- C. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement.
- D. All penalties owed to MDEQ under this Section shall be due and payable within thirty (30) days of Talen Montana's receipt from MDEQ of a written demand for payment of the penalties, unless Talen Montana invokes procedures for dispute resolution under Section XI. Such a written demand will describe the violation and will indicate the amount of penalties due.
- E. Talen Montana may dispute MDEQ's assessment of stipulated penalties by invoking the dispute resolution procedures in Section XI. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute

resolution period. Talen Montana shall pay stipulated penalties, if any, in accordance with the dispute resolution decision and/or agreement.

- F. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Talen Montana's obligation to comply with the term and conditions of this Agreement.
- G. The stipulated penalties set forth in this Section do not preclude MDEQ from pursuing any other remedies or sanctions which may be available to MDEQ by reason of Talen Montana's failure to comply with any of the terms and conditions of this Agreement, except that MDEQ shall not separately assess any penalties, remedies, or other sanctions for any failure by Talen Montana to submit the documents identified in Paragraph VI.A by the required deadlines under any of MDEQ's other authorities.
- H. No penalties will accrue or continue to accrue after 27 months from the Effective Date of this Agreement. Any penalties accrued under this Section during the two-year period following the Effective Date of this Agreement shall remain due and payable to MDEQ.

XIV. Reservation of Rights

- A. Notwithstanding any other provision of this Agreement, Talen Montana shall retain the right to propose to MDEQ revisions to Alternative 10 and/or Alternative 11A to account for (1) changes to federal or state laws or regulations, (2) permitting or other impediments to implementing either alternative, (3) technology developments in the disposal of ash, and/or (4) technology developments or opportunities for the beneficial use of ash in the SOEP/STEP. In the event issues arise affecting Talen Montana's ability to implement the selected remedy, the Parties agree to engage in good faith discussions regarding a path forward.
- B. This Agreement does not preclude Talen Montana from ceasing evaluation of Alternative 11A prior to the Request to Amend Due Date if, pursuant to Talen Montana's own analysis or comments from MDEQ, Talen Montana no longer seeks to amend MDEQ's selection of Alternative 10. Talen Montana will notify MDEQ in writing in the event it chooses to cease evaluation of Alternative 11A. Although Talen Montana may choose to cease evaluation of Alternative 11, MDEQ shall not unilaterally direct Talen Montana to do so.
- C. Nothing herein shall prevent MDEQ or Talen Montana from complying with any court order or other legal requirement.
- D. Except where Talen Montana's rights are expressly constrained by this Agreement, nothing herein shall prevent Talen Montana from exercising any right under the 2012 AOC if otherwise permissible under law and/or the 2012 AOC.

- E. Nothing herein shall prevent MDEQ from exercising any right under the 2012 AOC, including but not limited to MDEQ's right to take action under 2012 AOC Article XIV. Nothing herein shall prevent Talen Montana from defending any such actions taken by MDEQ.

XV. Effective Date and Completion of Dispute Resolution

- A. This Agreement must be signed by both an authorized representative of Talen Montana and by the MDEQ Director. The Agreement shall be effective on the date of the second signature.
- B. The dispute resolution process invoked by Talen Montana on December 17, 2020, shall be deemed completed as of the Effective Date of this Agreement.
- C. In the event of any challenge to this Agreement by a third party, it shall remain effective unless and until the Board of Environmental Review or a court issues an order rendering the Agreement unenforceable.

XVI. Dismissal of BER Notice

- A. Within 10 days of the Effective Date of this Agreement, the Parties shall file a joint status report with the Board of Environmental Review in Case No. BER 2020-07 MFSA/WQA stating that the Notice of Contest has been resolved through dispute resolution.
- B. Within 20 days of the Effective Date of this Agreement, the parties shall file a joint request to dismiss No. BER 2020-07 MFSA/WQA, with each party to bear its own costs and fees. The request shall be to dismiss with prejudice except that in an appeal of a decision under this Agreement, Talen Montana may incorporate challenges raised in BER 2020-07 MFSA/WQA to the extent those challenges are relevant to a Final Decision on Request to Amend. Nothing in this Paragraph shall be interpreted to limit, expand and/or provide appeal rights.

- C. Talen Montana agrees not to re-file any challenge to MDEQ's selection of a remedy for the SOEP/STEP Area with the Board of Environmental Review prior to the completion of the dispute resolution procedure set forth in Section XI of this Agreement.

FOR TALEN MONTANA, LLC
By Talen Montana Holdings, LLC,
as sole member

By: Andrew M. Wright

Name: Andrew M. Wright
Title: General Counsel and Secretary

Date: October 14, 2021

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: Christopher Dorrington

Name: Christopher Dorrington
Title: Director

Date: 10/18/2021

Attachment A



Gordon Criswell • Director, Environmental & Compliance
PO Box 38 • 580 Willow Avenue • Colstrip, MT 59323
(406) 748-5002 • gordon.criswell@talenergy.com

September 30, 2021

VIA EMAIL

Sarah Seitz
Montana Department of Environmental Quality

Re: Stage I & II Evaporation Ponds Remedy Selection – Updated Description of Alternative 11A

Dear Ms. Seitz,

As you know, in December 2020 Talen Montana, LLC (“Talen Montana”) invoked dispute resolution regarding the remedy selection and financial assurance decisions by the Montana Department of Environmental Quality (“MDEQ” or “Department”) with respect to the Units 1&2 Stage I and II Evaporation Ponds (“SOEP/STEP”) under the 2012 Administrative Order on Consent. In June 2021, MDEQ and Talen Montana reached agreement on a term sheet to resolve the issues in dispute, pending execution of final settlement agreement.

The settlement agreement incorporating the terms of the term sheet is nearly final. Condition 1 of the June 2021 term sheet provided that prior to the execution of the settlement agreement, Talen Montana would provide MDEQ with a summary of the referenced single additional alternative (“Alternative 11A”) to MDEQ. Accordingly, Talen Montana is hereby providing the following updated description of ash relocation for Alternative 11A.

Alternative 11A ash pond closure will involve the excavation and consolidation of deeper ash in the SOEP/STEP that is within five feet above the projected future maximum groundwater elevation in a manner conceptually similar to Alternative 11 as presented in Talen Montana’s September 2020 SOEP/STEP Revised Remedy Evaluation – Integrated Report. The precise movement and ultimate location of the ash during the consolidation process may be refined during the development and further analysis of Alternative 11A over the course of the next two years, but Talen Montana intends to limit the movement of ash in the following ways:

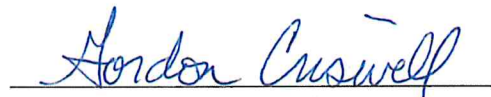
1. Ash will be consolidated 5 feet or more above the projected groundwater table after the capture and injection system is shut down (approximately 2055).
2. Ash from outside the SOEP will not be placed within the SOEP.
3. Ash from outside STEP A Cell will not be placed within STEP A Cell.
4. Except as stated in the following paragraph, ash from outside the collective footprint of STEP D Cell, E Cell, and the Old Clearwell will not be placed within the collective footprint of STEP D Cell, E Cell, and the Old Clearwell.

5. If any ash from outside STEP D Cell, E Cell, or Old Clearwell is placed in STEP D Cell, STEP D Cell will be lined in accordance with 40 C.F.R. § 257.72.
6. If any ash is placed in STEP B Cell, STEP B Cell will be lined in accordance with 40 C.F.R. § 257.72.

Nothing in the above description is intended to preclude excavation of the ash currently in this SOEP/STEP for beneficial use.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Gordon Criswell". The signature is written in a cursive style and is positioned above a horizontal line.

Gordon Criswell

Copies to:

Chris Dorrington, MDEQ Director (electronic copy)
Jenny Chambers, MDEQ (electronic copy)
Terri Mavencamp, MDEQ (electronic copy)
Katie Morris, MDEQ (electronic copy)
Edward Hayes, MDEQ (electronic copy)
Nicholas Whitaker, MDEQ (electronic copy)
Damon Obie, Talen Montana (legal) (electronic copy)
Dale Lebsack, Talen Montana (electronic copy)
Neil Dennehy, Talen Montana (electronic copy)
Jen Petritz, Talen Montana (electronic copy)
Joshua Frank, Baker Botts (electronic copy)
Martha Thomsen, Baker Botts (electronic copy)