

1 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
2 OF THE STATE OF MONTANA

3 In the Matter of an Order Setting Air
4 Pollutant Emission Limits that the State
5 of Montana may Submit to the Federal
6 Environmental Protection Agency for
7 Revision of the State Implementation Plan
8 Concerning Protection of Visibility,
9 Affecting the Following Facilities:
10 Talen Montana, LLC's Colstrip Steam
11 Electric Station, Units 1 and 2, and
12 JE Corette Steam Electric Station

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER**

9 The Montana Department of Environmental Quality and Talen Montana,
10 LLC, hereby agree to the following Findings of Fact and Conclusions of Law:

11
12 FINDINGS OF FACT

13 1. In the 1977 Amendments to the Federal Clean Air Act (Act),
14 Congress set as a national goal the prevention of any future, and the remedying of
15 any existing, impairment of visibility resulting from manmade air pollution in
16 mandatory Federal Class I Areas. § 169A of the Act; 42 U.S.C. § 7491.

17 2. On July 1, 1999, the United States Environmental Protection Agency
18 (EPA) promulgated the Regional Haze Rule (Rule) for the protection of visibility.
19 The purpose of the Rule is to reduce or eliminate manmade impairment of
20 visibility at 156 Class I Areas, working toward a goal of natural visibility

1 conditions by the year 2064. EPA promulgated the Rule under Section 169A of
2 the Act, 42 U.S.C. § 7491.

3 3. The Rule requires each state to submit a State Implementation Plan
4 (SIP) to EPA for the control of air pollutants that contribute to haze. 40 C.F.R. §
5 51.308. The State of Montana was required to submit a SIP by December 17,
6 2007.

7 4. In 2006, the Montana Department of Environmental Quality
8 (Department) notified EPA that Montana would not submit a SIP by the prescribed
9 due date. On January 15, 2009, EPA finalized a finding that 37 states, including
10 Montana, had failed to submit SIPs required by the Rule. 74 Fed. Reg. 2,392.

11 5. Section 110(c)(1) of the Act, 42 U.S.C. § 7410(c)(1), requires EPA to
12 promulgate a Federal Implementation Plan (FIP) when it finds that a state has
13 failed to make a required submission.

14 6. On September 18, 2012, EPA finalized a FIP (77 Fed. Reg. 57,863) to
15 address regional haze in Montana. The FIP, codified at 40 C.F.R. § 52.1396,
16 described visibility conditions at each Class I Area in Montana for the baseline
17 years of 2000-2004 and established a set of visibility goals to be achieved by the
18 year 2018. The FIP contains emission limitations and other requirements intended
19 to improve visibility.

20

1 7. As part of the program to reduce existing contributions to visibility
2 impairment, the FIP required certain industrial sources, including the coal-fired
3 electric generating units at Colstrip Steam Electric Station, Units 1 and 2, in
4 Colstrip (Colstrip), and JE Corette Steam Electric Station in Billings (Corette),
5 both then operated by PPL Montana, LLC, to meet specific emission limitations
6 for particulate matter (PM), sulfur dioxide (SO₂), and nitrogen oxides (NO_x). The
7 FIP also required the installation and operation of a continuous emission
8 monitoring system (CEMS) to determine compliance with the emission limitations.

9 8. On March 18, 2015, the Corette facility was officially retired. As a
10 result, on May 13, 2015, PPL Montana requested that the Department revoke the
11 facility's Montana air quality permit #2953-00 and Title V Operating Permit
12 #OP2953-08. The Department revoked the permits in a letter dated May 21, 2015.
13 The Corette facility was subsequently dismantled.

14 9. On May 7, 2015, the Department received a letter requesting a change
15 in company name for the Colstrip facility, reflecting action by PPL Corp., the
16 parent company of PPL Montana, LLC, to change the name of PPL Montana, LLC
17 to Talen Montana, LLC (Talen).

18 10. On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit
19 vacated the limits in the regional haze FIP for SO₂ and NO_x emissions from
20 Colstrip Units 1 and 2 and Corette, after finding the limits to be arbitrary and

1 capricious. The court remanded the limit determinations back to EPA for further
2 analysis. *Nat'l Parks Conservation Ass'n v. U.S. EPA*, 788 F.3d 1134, 1149 (9th
3 Cir. 2015). The PM emission limits and other requirements in the FIP for both
4 facilities remain in place and are contained in Exhibit A.

5 11. On December 14, 2015, the Department submitted to EPA a request
6 for redesignation and a SIP revision containing a maintenance plan for the Billings
7 2010 SO₂ nonattainment area, which cited the shutdown of the Corette facility in
8 its determination that the air quality improvement in the area was due to permanent
9 and enforceable emission reductions.

10 12. On May 10, 2016, EPA finalized its approval of the Department's
11 redesignation request and maintenance plan for the Billings 2010 SO₂
12 nonattainment area, determining that the shutdown of the Corette facility was
13 permanent and enforceable. 81 Fed. Reg. 28,718.

14 13. On September 6, 2016, Sierra Club and the owners of Units 1 and 2 at
15 the Colstrip facility entered Consent Decree, in which the owners agreed to retire
16 those two units by no later than July 1, 2022. In addition, in the Consent Decree,
17 the owners agreed that the units would comply with specific SO₂ and NO_x
18 emission limits until such time as the units cease operation. *Sierra Club v. Talen*
19 *Mont., LLC*, CV 13-32- BLG-DLC-JCL (D. Mont. 2016). The terms of the
20 Consent Decree required the owners to request that the Department amend Talen's

1 Title V Operating Permit #OP0513-13 to include the Decree's emission limits and
2 shut down date. On January 4, 2017, Talen submitted a Title V Operating Permit
3 renewal application, which included a request to include the terms of the Consent
4 Decree in the permit. The Department issued a final Operating Permit on July 17,
5 2018. Therefore, the Consent Decree's emission limits and shut down date are
6 now contained in Talen's Title V Operating Permit.

7 14. On November 7, 2017, the Department submitted a report to EPA
8 detailing the progress made toward reducing emissions and improving visibility
9 since the FIP was promulgated, including documented reductions in PM, SO₂, and
10 NO_x at Colstrip and Corette.

11 15. The remaining emission control strategy outlined in the FIP, and
12 included in Exhibit A, combined with the above-mentioned enforceable 2015
13 shutdown of the Corette facility and required emission limits and shutdown of
14 Colstrip Units 1 and 2 by July 2022, make greater overall progress than the 2012
15 FIP, and would continue to assure protection of visibility should the State of
16 Montana gain authority for implementation and enforcement of remaining FIP
17 requirements through a SIP.

18 16. 40 C.F.R. Part 51, Appendix V, prescribes the criteria for determining
19 completeness of a SIP submission. Appendix V ¶ 2.1(b) requires that the state
20

1 submit “[e]vidence that the State has adopted the plan in the State code or body of
2 regulations; or issued the permit, order, consent agreement ... in final form.”

3 17. In this proceeding, the parties are seeking a Board Order approving
4 and adopting the emission control strategy incorporated here as Exhibit A, which
5 would fulfill the state adoption requirements of a SIP submission.

6 18. The parties intend that, if Exhibit A is adopted and incorporated by
7 Board Order, the State of Montana will submit it to EPA for review and approval
8 as part of the Regional Haze SIP, replacing any existing FIP requirements.

9

10 CONCLUSIONS OF LAW

11 1. The Board has authority under § 75-2-203, Montana Code Annotated
12 (MCA) to set air pollutant emission levels.

13 2. The Department is responsible for preparing and developing a
14 comprehensive plan for the prevention, abatement, and control of air pollution in
15 the State of Montana. § 75-2-112(2)(c), MCA.

16 3. The Board is authorized to issue orders necessary to effectuate the
17 purposes of the Montana Clean Air Act. § 75-2-111(3), MCA.

18 4. A Board Order adopting and incorporating the requirements of
19 Exhibit A is necessary to create an enforceable mechanism that may be submitted
20 by the State of Montana to EPA for inclusion into the SIP.

1 5. All Findings of Fact in this Memorandum and Order are incorporated
2 into these Conclusions of Law.

3 6. The undersigned parties request the Board to issue an order adopting
4 the requirements of Exhibit A. Effective on adoption in and issuance of a Board
5 Order, such requirements will be enforceable by the Department.

7 TALEN MONTANA, LLC

DEPARTMENT OF
ENVIRONMENTAL QUALITY

8 By: _____

By: [Signature]

9 [Signature]
10 General Counsel

By: [Signature]
Attorney NJ mulken

11 Date: _____

Date: Aug. 29, 2019

12
13
14 ORDER

15 The Board adopts the Findings of Fact and Conclusions of Law, and orders
16 that the emission control strategy in Exhibit A is adopted.

17 BOARD OF ENVIRONMENTAL REVIEW

18
19 10/18/19
Date

By: [Signature]
CHRISTINE DEVENY
Chair

EXHIBIT A

EMISSION LIMITATIONS AND CONDITIONS FOR THE PROTECTION OF VISIBILITY

Section 1 Applicability

- (1) This document applies to the owner/operator of the following coal-fired electric generating units (EGUs):
- a. Talen Montana, LLC – Colstrip Steam Electric Station, Units 1 and 2.
Plant Location: The legal description of the plant’s location is Section 34, Township 2 North, Range 41 East, in Rosebud County, Montana.
 - b. Talen Montana, LLC – JE Corette Steam Electric Station.
Plant Location: The facility no longer exists.

Section 2 Definitions

- (1) Terms not defined below shall have the meaning given them in the Federal Clean Air Act or EPA’s regulations implementing the Clean Air Act. For purposes of this section:
- a. *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO₂ or NO_x emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.
 - b. *NO_x* means nitrogen oxides.
 - c. *Owner/operator* means any person who owns or who operates, controls, or supervises a unit identified in Section 1 of this document.
 - d. *PM* means filterable particulate matter.
 - e. *SO₂* means sulfur dioxide.
 - f. *Unit* means any of the EGUs identified in Section 1 of this document.

Section 3 Emissions Limitations

(1) For Colstrip Steam Electric Station, Units 1 and 2:

- a. The owner/operator shall not emit or cause to be emitted PM in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu):

Source Name	PM Emission Limit (lb/MMBtu)
Colstrip Steam Electric Station, Units 1 and 2	0.10

- i. These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.
- b. The owner/operator shall permanently cease operation no later than July 1, 2022, as required by the Consent Decree in Case 1:13-cv-00032-DLC-JCL filed 09/06/2016. The owner/operator requested that these terms be included in the facility's Title V Operating Permit and the Department issued a final permit containing the terms on July 17, 2018.
 - i. The requirement that the units cease operation no later than July 1, 2022, is equivalent to the most stringent level of control. No further analysis of best available retrofit technology (BART) is necessary.

(2) For JE Corette Steam Electric Station:

- a. The permanent and enforceable shutdown, approved into the Montana SIP at 81 Fed. Reg. 28,718, is equivalent to the most stringent level of control. No further analysis of BART is necessary.

Section 4 Compliance Date

(1) The owner/operator shall comply with the emission limitations and other requirements of this section as follows, unless otherwise indicated in specific

paragraphs: Compliance with PM emission limits was required by November 17, 2012.

Section 5 Compliance Determinations

- (1) Compliance determinations for particulate matter
 - a. Compliance with the particulate matter BART emission limits for each EGU BART unit shall be determined by the owner/operator from annual performance stack tests. On at least an annual basis following the initial compliance test, the owner/operator of each unit shall conduct a stack test on each unit to measure the particulate emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 C.F.R. part 60, Appendix A.

Section 6 Recordkeeping

- (1) The owner/operator shall maintain the following for at least five years:
 - a. All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.
 - b. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 C.F.R. part 75.
 - c. Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.
 - d. Any other records required by 40 C.F.R. part 75.
 - e. All particulate matter stack test results.

Section 7 Reporting

- (1) All reports under this section, shall be submitted by the owner/operator to the Air Quality Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.
- (2) The owner/operator of each unit shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks),

reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator shall submit reports quarterly.

- a. The owner/operator of each unit shall also submit results of any CEMS performance tests required by 40 C.F.R. part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).
- (3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the quarterly reports required by Section 6 of this document.
- (4) The owner/operator of each unit shall submit results of any particulate matter stack tests conducted for demonstrating compliance with the particulate matter BART limits in Section 3 of this document within 60 days after the completion of the test.
- (5) The owner/operator of each unit shall submit semi-annual reports of any excursions under the approved CAM plan in accordance with the schedule specified in the source's title V permit.

Section 8 Equipment Operation

- (1) At all times, the owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.