IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 22-0068

MONTANA ENVIRONMENTAL INFORMATION CENTER, AND SIERRA CLUB.

Plaintiffs / Appellees,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, MONTANA BOARD OF ENVIRONMENTAL REVIEW,

Respondent / Appellant,

and

WESTMORELAND ROSEBUD MINING, LLC f/k/a WESTERN ENERGY CO., NATURAL RESOURCE PARTNERS, L.P., INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400, and NORTHERN CHEYENNE COAL MINERS ASSOCIATION,

Respondent-Intervenors / Appellants.

BRIEF OF TALEN MONTANA, LLC AS AMICUS CURIAE IN SUPPORT OF APPELLANTS' RULE 22 MOTIONS

On Appeal from the Sixteenth Judicial District Court, Rosebud County,
Montana Cause No. DV 19-34
The Honorable Katherine Bidegaray

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INTERESTS OF AMICUS CURAIE

Talen Montana, LLC ("Talen Montana") is the co-owner and operator of the Colstrip Steam Electric Station ("CSES") Units 3&4, which generate and supply electric power to customers in Montana and across the Northwest, including homeowners, commercial businesses, and industrial facilities. As operator of CSES Units 3&4, Talen Montana is responsible for day-to-day operations and power generation, long-term scheduling and planning, and compliance with the various environmental permit obligations associated with the operation of CSES Units 3&4. *See* Exhibit 1, Declaration of Shannon Brown, ¶ 8 (Dec. 20, 2021) ("Brown Second Declaration").[1] Talen Montana is dependent on coal from the Rosebud Mine, which is operated by Westmoreland Rosebud Mining LLC ("WRM"), to generate and supply that power because the Mine is the sole source of fuel for CSES Units 3&4. *Id.* at ¶ 11.

This case concerns a series of fundamentally flawed Orders by the District Court that, in less than two months, will vacate a vital permit issued to WRM and will shut down mining activities at the Rosebud Mine that are critical for CSES Units 3&4 to continue operating at sufficient capacity to meet state and regional energy demands. Allowing the vacatur to stay in place threatens to disrupt Talen Montana's

[1] The Brown Second Declaration was originally filed with the District Court as an attachment to Talen Montana's Reply Brief in Support of Motion to Intervene (Dec. 20, 2021) ("Talen Montana Reply Brief"), attached hereto as Exhibit 11.

ability to supply electricity to the power grid and could result in severe downstream effects to the people of Montana (and elsewhere), including energy price fluctuations, brownouts, or blackouts. *See* generally Exhibit 1, Brown Second Declaration ¶¶ 13-37.

In issuing Orders that threaten to deprive Montana of adequate power supply in the summer months when electricity demand is highest, the District Court did not consider evidence from persons most knowledgeable of these potentially severe consequences. Talen Montana timely filed a reply brief in support of its motion to intervene on December 20, 2021, which was docketed by the District Court as docket entry 104. *See* Exhibit 2, District Court Docket Sheet dated 1/28/2022. Nevertheless, the District Court's January 28, 2022 order denying Talen Montana's motion to intervene erroneously stated that "Talen did not file a reply brief in support of intervention." *See* Exhibit 3 at *6, District Court Order re Intervention (Jan. 28, 2022) ("District Court Intervention Decision"). The District Court thus failed to analyze critical issues relevant to the issue of both intervention and vacatur.

Notably, the Appellees, not the District Court, wrote the fifteen-page order signed by Judge Bidegaray denying Talen Montana's motion to intervene. *See* Exhibit 4 (email exchange between Judge Bidegaray's office and counsel for Appellees requesting and conveying the proposed order denying the motion to intervene); *compare* Exhibit 5, Proposed Intervention Decision, *with* Exhibit 3,

District Court Intervention Decision. This Court has explained that "we discourage a district court's verbatim adoption of a prevailing party's proposed order," providing further that a "district court may adopt a party's proposed order where it is sufficiently comprehensive and pertinent to the issues to provide a basis for the decision." *Wurl v. Polson Sch. Dist. No. 23*, 2006 MT 8, ¶ 29, 330 Mont. 282, 292, 127 P.3d 436, 444 (citing *In re M.W.*, 2004 MT 301, ¶ 28, 323 Mont. 433, 102 P.3d 6). The proposed order submitted by Appellees and adopted by the District Court here failed to even consider Talen Montana's reply brief and thus was far from "comprehensive." It is apparent the District Court did not fully and fairly consider Talen Montana's briefing, and thus did not have a complete grasp of the enormous consequences of the vacatur order.

Talen Montana therefore files this *amicus curiae* brief in support of the Rule 22 motions to ensure this Court is fully apprised of the errors underlying the District Court's vacatur decision, the irreparable harms that may very well occur absent a stay, and the public interests in avoiding those harms risked by the District Court's erroneous Orders. Talen Montana is specifically supporting the following three motions, all filed February 8, 2022 in their respective dockets: Appellant DEQ's Motion for Stay (DA 22-0067), Appellants WRM, et al.'s Motion for Stay (DA 22-

0064), and Appellants WRM, et al.'s Motion for Stay (DA 22-0068).[2] Talen Montana respectfully urges this Court to stay the District Court's Orders pending appeal.

STATEMENT OF THE CASE

Following a years-long contested case before the Montana Board of Environmental Review ("BER"), in which the Appellees below challenged the Montana Department of Environmental Quality's ("DEQ") issuance of a mining permit amendment ("the AM4 Permit") for a portion of Area B at the Rosebud Mine ("the AM4 Area"), the BER in June 2019 affirmed DEQ's issuance of the AM4 Permit. The Appellees appealed the BER's decision to the District Court pursuant to the Montana Administration Procedure Act ("MAPA"). The parties briefed the District Court on the merits (but not remedy) and, by Order dated October 28, 2021, the District Court reversed BER's final decision and remanded to DEQ. The October 28 Order did not address or direct vacatur of the AM4 Permit.

Subsequently, the parties submitted various filings on remedy. Specifically, on November 5, 2021, DEQ requested the District Court stay enforcement of the October 28 Order pending an appeal and also sought clarification on whether, absent

[2] Because Talen Montana's support for each of the three motions is substantively identical and the appeals may be consolidated, in the interest of conserving judicial resources Talen Montana proposed filing a single identical *amicus curiae* brief in each of the three appeals.

a stay, the Order required a cessation of mining at the AM4 Area. Days later, on November 8, 2021, WRM filed a motion on remedy that requested the District Court remand to BER, rather than DEQ, decline to vacate or enjoin the AM4 Permit, and stay the Order pending appeal.

On November 22, 2021, the Appellees filed a response to DEQ's and WRM's remedy motions demanding the District Court deny those two motions. While the Appellees asserted that reversal of the BER decision was *already* equivalent to vacatur of the AM4 Permit, they proposed the District Court impose an equitable remedy that slightly deferred vacatur of the AM4 Permit until April 1, 2022. As noted below, this brief from Appellees came 10 days *after* Talen Montana filed its own motion for leave to intervene and detailed the grave ramifications of immediate vacatur. Exhibit 2.

All parties' filings on remedy placed Talen Montana and CSES squarely in the center of this litigation. All of the filings expressly discussed the impact that the District Court's remedy would have on Talen Montana, CSES Units 3&4, and the power grid. *See, e.g.*, Exhibit 8, DEQ Br. on Remedy at 2 (pointing out that vacatur would shut down the sole source for coal combusted at CSES Units 3&4 "used to generate electricity for Montanans and people in other northwestern states"); Exhibit 9, WRM Br. at 3-4 (pointing out vacatur would make WRM "unable to provide [CSES Units 3&4] with enough coal to meet [its] fuel demands" and would

"jeopardize the generation of reliable electricity"). Indeed, Appellees' proposal for deferred vacatur rested entirely on the false premise that adverse impacts would be avoided merely by delaying vacatur until April 1, 2022.[3]

On November 12, 2021, days after the initial remedy filings from WRM and DEQ *but before Appellees requested a slightly deferred vacatur* in their remedy response brief, Talen Montana timely sought to intervene at the remedy stage to present the District Court with an accurate record of how the operation of Units 3&4 would be affected by vacatur of the AM4 Permit. *See generally* Exhibit 6, Talen Montana Memorandum in Support of Motion to Intervene as Respondent (Nov. 12, 2021) ("Talen Montana Intervention Motion"); Exhibit 7, Declaration of Shannon Brown (Nov. 12, 2021) ("First Brown Declaration").[4] Notwithstanding the consensus that impacts to Talen Montana and the power grid were central to the District Court's evaluation of remedy, the Appellees opposed Talen Montana's motion for intervention and expedited consideration of that motion, filing a brief to that effect on December 6, 2021. Exhibit 2. Talen Montana filed its Reply Brief,

[3] Exhibit 10, Appellees Br. on Remedy at 1-4, 12 (arguing that energy from CSES Units 3&4 was "unneeded" in the spring months, that CSES Units 3&4 could simply "shut down" one unit "without negatively affecting energy supplies or energy costs," and that CSES Units 3&4 had "sufficient" stockpiles run one unit and "meet reduced spring electricity demand" for four months if vacatur was deferred until April 2022).

[4] The First Brown Declaration was originally filed with the District Court as an attachment to the Talen Montana Intervention Motion.

Exhibit 11, on December 20, 2021. The Talen Montana Reply Brief refuted Appellees' argument that deferring vacatur until April 2022 somehow would negate potentially catastrophic impacts to the power grid or Talen Montana. The significant factual errors in Appellees' briefing with respect to CSES Units 3&4 operations was largely due to their reliance on the declaration of a Seattle resident with no direct experience with CSES. By contrast, the Talen Montana Reply Brief was backed by a declaration from Shannon Brown (Exhibit 1), a Talen Montana senior director of asset management focused on CSES Units 3&4, and explained in detail that even deferred vacatur would produce the very harms Appellees conceded should be avoided. The District Court Order failed to consider the Talen Montana Reply Brief or supporting declaration of Shannon Brown as noted above.[5]

On January 28, 2022, the District Court—in two separate orders essentially drafted by Appellees[6]—ordered vacatur of the AM4 Permit effective April 1, 2022, denied the motion for stay, and denied Talen Montana's motion to intervene. In denying the motion for stay, the District Court also did not address any of the public harms raised in Talen Montana's briefing. On February 8, 2022, Appellants filed Rule 22 motions to stay the District Court's Orders pending appeal in their respective dockets.

[5] *See* footnote 1, *supra*.

[6] *See supra* at 2.

ARGUMENT

Time is of the essence. Should the District Court's Orders stand, even for a few months, the risk of a significant disruption to Montana's electrical supply becomes increasingly likely. If mining operations cease at the AM4 Area on April 1, 2022, CSES Units 3&4 are at risk of not having enough coal of sufficient quality and quantity to run the units at full capacity and meet the energy demands in Montana and the Pacific Northwest. Appellees' ongoing efforts to shut down *other* mine areas only exacerbate this risk. For example, separate from this action, Appellees are also currently challenging WRM's permits for Area F before the United States District Court for the District of Montana and requested immediate vacatur there. On February 11, 2022, Magistrate Judge Timothy J. Cavan issued findings and recommendations that would vacate the agency action halt activities at Area F (another area of Rosebud Mine) in 365 days, recognizing that "immediate vacatur would have detrimental consequences for the Mine, its employees and the Colstrip community." Exhibit 12 at *37, Findings and Recommendations of United States Magistrate Judge (February 11, 2022).

As established by record evidence the District Court failed to consider, the stockpile of coal at CSES Units 3&4 is insufficient to continue operations for more than a month. Obtaining permanent alternative sources of coal could take *years*. It is not clear that any of the currently permitted reserves at the Rosebud Mine are an

adequate or reliable substitute for AM4 with respect to coal quality. Thus, vacatur of the AM4 Permit means CSES Units 3&4 may run out of fuel in the coming months, and the result of such a fuel shortage would be an increased risk of volatile energy prices, brownouts, and/or blackouts, particularly when energy demands surge in the winter and summer months, or following severe weather or drought events. If the permit is vacated April 1, every day that the District Court's Orders remain increases the risk that CSES Units 3&4 will be forced to shut down.

Good cause exists for a stay. "Good cause is generally defined as a 'legally sufficient reason' and referred to as 'the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused.'" *City of Helena v. Roan*, 2010 MT 29, ¶ 13, 355 Mont. 172, 175-76, 226 P.3d 601, 604 (quoting Black's Law Dictionary 251 (Bryan A. Garner ed., 9th ed., West 2009)). Good cause "will necessarily depend upon the totality of the facts and circumstances of a particular case." *Id.*

The District Court's Orders risk disruptions to CSES Units 3&4 and the reliability and cost of energy supply in the state and region. Appellees already conceded that the District Court should tailor an equitable remedy to avoid that result. The District Court apparently agreed in principle, but then erroneously adopted Appellees' unfounded assertions that slight deferral to April 2022 would avoid those harms. In addition to the manifest errors in law addressed in Appellants'

motions that demonstrate a gross abuse of discretion by the District Court, the District Court's order on remedy and denial of a stay rests on fundamental errors of fact about the ability of CSES Units 3&4 to operate without coal from the AM4 Area. These errors could have been avoided if the District Court had fully considered Talen Montana's briefing before adopting the orders drafted by Appellees. Instead, the District Court adopted Appellees' factual assertions whole cloth and denied Talen Montana—the entity with the most knowledge of the operational capabilities of CSES Units 3&4 and the potential impacts that vacatur will have on the ability to provide sufficient power to the Montana power grid—an opportunity to heard. With a stay pending appeal, all of these errors can be corrected. But without a stay, the District Court's erroneous Orders risk triggering real-world effects that cannot be unwound by an appellate opinion months from now. Accordingly, the Rule 22 stay motions should be granted.

I. Good cause exists to stay vacatur pending appeal—the District Court's factual findings ignored entire portions of the record and wrongly assumed that deferred vacatur would resolve any harms to Talen Montana or the power grid.

As a threshold matter, the parties below and the District Court all agree that the District Court sits in an appellate posture in reviewing the final decision of BER. To the extent a decision on remedy was needed at all, the proper tribunal to address that in the first instance was the agency on remand, BER, and not the appellate court. *See Gould Ranch Cattle Co. v. Irish Black Cattle Ass'n*, 2018 MT 80N, ¶ 7, 392

Mont. 551, 414 P.3d 1248 (agreeing that appellate courts "should not, in the first instance, determine the merits of the preliminary injunction" and remanding the issue for the trier of fact to make "findings of fact and conclusions of law" addressing the application for an injunction).

In granting Appellees' preferred remedy, the District Court, in just one paragraph, found that the harms related to vacatur would be "resolved by deferring vacatur until April 1, 2022":

> Here, WRM claims that, if it is required to cease operations in the AM4 Area, it might not be able to supply sufficient coal to the Colstrip Power Plant, which could in turn "jeopardize" electricity supplies during the winter period of high energy demand. WRM Br. on Remedy at 10-11. WRM's hypothetical concerns about coal and electricity supply are highly speculative, **given AM4 constitutes less than 10% of the mine's permitted reserves, which are distributed between four active mine areas.** Schlissel Decl. ¶ 9; *cf.* WRM Br. on Remedy, Ex. A (Declaration of Russell Batie) ¶ 4 (stating only 30% of mine production from AM4, 70% from other areas). Even assuming WRM's worst-case scenario were accurate, however, if vacatur is deferred until spring, when electricity demand is low and supplies of hydroelectric and solar energy are abundant, "it is still extremely unlikely that energy supplies or energy costs in Montana or the Pacific Northwest would be negatively affected." Schlissel Decl. ¶ 19. This is because coal stockpiles at the mine and power plant, identified by WRM and **plant operator Talen Montana, LLC, are sufficient to keep at least one of the two Colstrip units operating for four months** (the maximum time need [sic] to move WRM's equipment), **which is sufficient to meet reduced spring electricity demands.** *Id*. **Indeed, in both 2021 and 2020, one of the two Colstrip units was shut down for two-and-one-half months during spring and fall shoulder seasons**. *Id*. ¶ 17.

Ex. B to Appellants' Rule 29 Motion (DA 22-0068) at 12 (emphasis added).

In denying the motion for stay, the District Court incorrectly determined that "Respondent's concerns about coal and energy supplies will be assuaged" by deferral of vacatur to April 2022 and there was "no probability Respondents would suffer irreparable harm." *Id.* at 20. This is plainly wrong—the "concerns" about "coal and energy supplies" are not assuaged by a slightly deferred vacatur; the assumptions underlying the District Court's vacatur order risk irreparable harm to the people of Montana.

The Court's fact-finding here was based on an incomplete consideration of only *some* of the submitted declarations and is demonstrably incorrect.

First, the District Court relied heavily on the declaration of David Alan Schlissel, a resident of Seattle Washington with no direct knowledge of the workings of either Rosebud Mine or CSES. *See* Exhibit 13, Schlissel Declaration. Without any explanation or fact-finding hearing, while sitting in an appellate posture, the District Court relied on Mr. Schlissel over the declaration of Russell Batie, WRM's Environmental and Engineering Manager at the Rosebud Mine. *See* Exhibit 14, Batie Declaration. The District Court further relied on Mr. Schlissel's unfounded opinions about the impact on CSES Units 3&4 operations while *ignoring* the declaration of Shannon Brown, senior director of asset management for Talen Energy Supply, LLC, whose responsibilities include administering the coal supply agreement with WRM. *See* Exhibit 1, Brown Second Declaration ¶ 4.

Second, the Rosebud Mine is the sole and exclusive supplier of coal used by CSES Units 3&4 through at least 2025. Exhibit 1, Brown Second Declaration ¶ 11-12. Talen Montana is currently required by contract to purchase all coal for Units 3&4 from WRM, with a limited exception for test burns of coal from other mines. *Id.*

In addition to these contractual obligations limiting Talen Montana's ability to use alternate sources of coal, Talen Montana's practical ability to obtain coal from other sources is extremely constrained by real-world logistics issues and its environmental compliance obligations. *Id.* at ¶¶ 15-18. There are no rail unloading facilities at CSES Units 3&4, meaning Talen Montana has no present ability to transport coal by rail to the facility. *Id.* at ¶ 16. Trucking all coal to CSES Units 3&4 from other sources would require approximately 724 deliveries per day—one truck every two minutes every single day—and negotiations for this delivery volume would typically take months or years. *Id.* at ¶¶ 17-18. Additionally, before entering into any such supply agreements, Talen Montana would likely be required to conduct test burns of coal from other mines to ensure compliance with its air permit and emission control obligations. *Id.* at ¶¶ 16-17. Should amendments of the air permits be necessary, this process would take even longer. *Id.*

Third, Talen Montana, for the foreseeable future, is dependent on coal from the AM4 Area, and cannot rely exclusively on coal from other areas of the Rosebud

Mine. *Id.* at ¶¶ 19-20. The boilers at Units 3&4 were designed and are configured to burn coal of a certain quality. *Id.* Use of coal that does not meet those specifications could disrupt the boilers operations and jeopardize permit compliance. *Id.* WRM supplies coal consistent with CSES Units 3&4 specifications by blending the coal from other areas of the mine with AM4 coal, which is of higher quality. *Id.*[7] According to WRM, the coal from other mine areas are not suitable replacements for the higher quality AM4 coal. *Id.*[8] There is no certainty that other mine areas could provide adequate substitutes in the near- or long-term, either because they would take months or years—and potentially other legal or regulatory work—to extract and/or are of insufficient quantity or quality to meet the demand and specifications for CSES Units 3&4. *Id.*

Appellee's declarant, David Schlissel, did not address this in his speculative declaration; in fact, he never even mentioned coal quality as a relevant issue at all. *See* Exhibit 13, Schlissel Declaration. Further, Appellees are currently attempting to vacate permits related to some of these other areas, which—if successful—makes the AM4 Area even more important to operations at CSES Units 3&4. For example, Appellees have been challenging WRM's permits for Area F since 2019, making their argument here that CSES Units 3&4 could simply use coal from other areas

[7] *See also* Exhibit 14 (Batie Declaration) at ¶ 11.
[8] *See also* Exhibit 14 (Batie Declaration) at ¶¶ 9.2-9.4, 10.

disingenuous at best. Magistrate Judge Cavan's February 11, 2022 findings and recommendations, if adopted by the U.S. District Court, would eliminate one of the four active mine areas Appellees' declarant suggested would be potential alternatives to AM4. Exhibit 12.

Fourth, because Talen Montana is dependent on coal from the Rosebud Mine, and specifically upon coal from the AM4 Area, cessation of mining activities may very well result in Talen Montana quickly running out of fuel for CSES Units 3&4. *Id.* at ¶¶ 13-14. CSES Units 3&4 have only 25-30 days' worth of coal stockpiled on-site for emergency use. *Id.* This emergency coal is stored in a "dead pile" and covered in a concrete-like crust to prevent release of coal dust from the pile. *Id.* This storage area cannot be materially expanded, meaning Talen Montana cannot stockpile more coal between now and April 2022 to make up for a cessation of operations at the Mine. *Id.* Once depleted, the stockpile cannot be replaced if mining activities in the AM4 Area have ceased and there is no alternate source of adequate quality fuel. *Id.* Westmoreland has a similarly limited stockpile of coal adequate for use at CSES Units 3&4. Exhibit 14 (Batie Declaration) at ¶ 14. Thus, once these stockpiles are depleted, CSES Units 3&4 are at risk of having no reliable source of fuel, potentially for years.

Fifth without fuel of sufficient quantity or quality, Talen Montana would be unable to operate CSES Units 3&4 at full capacity (or potentially at all), which could

quickly disrupt the power grid for a variety of reasons depending on the availability of other generation sources, demand for energy, and other factors. Brown Second Declaration ¶¶ 13, 21. CSES Units 3&4 are important dispatchable energy sources for energy used in Montana and the Northwest year-round, meaning the units can be dispatched up and down to meet fluctuating seasonal energy demands. *Id.* at ¶ 25. Energy demand typically spikes in the summer and winter months, as customers deal with seasonal heat and cold. *Id.* at ¶¶ 24, 29.

CSES Units 3&4 are among the first sources to get dispatched to meet that demand. *Id.* at ¶ 26. In contrast, non-dispatchable energy sources, like wind and solar, cannot be turned on or off to meet demand because they are dependent on external environmental factors, like the availability of consistent sunlight or wind. *Id.* Similarly, the availability of hydropower is partially dependent on environmental factors—for example, supply is more limited in drought conditions, as was the case in 2021 and is anticipated in 2022. *Id.* at ¶¶ 26-27. Thus, the continued operation of CSES Units 3&4 will likely be critical to meeting the typical seasonal demand surges, at least through 2022.

To that end, there are no planned outages for CSES Units 3&4 through Spring or Fall 2022. *Id.* at ¶ 22. Prior outages at CSES Units 3&4 in 2020 and 2021 were required for maintenance, and the timing of such outages are carefully planned based on anticipated surplus in the energy market supply and anticipated demand. *Id.*

CSES Units 3&4 are almost never both taken offline at the same time. *Id.* An unplanned outage resulting from a lack of fuel would likely result in energy price increases due to a drop in supply of power. *Id.* at ¶¶ 23, 32-37. In the worst-case scenarios, this drop in supply could coincide with surging seasonal demand, which could result in brownouts or blackouts, and the temporary loss of access to power during the hottest and coldest parts of the year. *Id.* at ¶¶ 29-31. The longer CSES Units 3&4 remain offline, or in reduced operation, the more likely this becomes. Indeed, deferral to April 2022 will do nothing to avoid disruptions that would result from a lack of fuel during surging *summer* demand.

II. Public interest weighs in favor of granting the Rule 22 motions

As noted in Appellants' Rule 22 motions, one of the factors this Court considers is whether issuance of a stay is in the public interest. *Vote Solar v. Mont. Dep't PSC*, DA 19-0225, Order on Stay at *2 (Mont. Sup. Ct. Aug. 6, 2019). It is plainly in the public interest to preserve the public's access to a reliable supply of power. *Id.* at *4. Indeed, all the parties below, including Appellees, agreed that the equities here favor preserving the ability of CSES Units 3&4 to produce power for the people of Montana, but Appellants were wrong that deferral of vacatur by a few months would accomplish that goal. The District Court's flawed Orders now put the operation at CSES Units 3&4 in jeopardy as early as April 2022, which would put the public at risk of higher energy prices, brownouts, and/or blackouts while Talen

Montana works to find permanent alternate sources of fuel (which could take years). Thus, the public interest will suffer harm if the stay is denied. But the public interest will suffer no harm by maintaining the status quo while these legal issues are resolved. Accordingly, the public interest favors granting the Rule 22 motions and staying the District Court's Orders pending appeal.

CONCLUSION

The Rosebud Mine is the sole source of coal to CSES Units 3&4, and there are no readily available sources of replacement fuel that would allow CSES Units 3&4 to continue operations if mining activities at the AM4 Area cease in April 2022. Obtaining alternative sources of coal of sufficient quality and quantity could take *years*. In the meantime, CSES Units 3&4 is in jeopardy of being unable to operate at full capacity, which risks unstable energy prices or, in the worst case scenario, loss of power during the demand surges associated with the winter and summer months (or during extreme weather events). This would result in irreparable harm to both the people of Montana and Talen Montana, and the public interest favors a stay pending appeal. Talen Montana respectfully requests this Court grant the Rule 22 motions.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that the foregoing *amicus curiae* brief is proportionally spaced, in 14 point Times New Roman typeface, and 4,512 words, excluding any table of contents, table of citations, certificate of service, certificate of compliance, or any appendix containing statutes, rules, regulations, and other pertinent matters.

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I, Robert L. Sterup, hereby certify that I have served true and accurate copies of the foregoing BRIEF OF TALEN MONTANA, LLC AS AMICUS CURIAE IN SUPPORT OF APPELLANTS' RULE 22 MOTIONS to the following on February 23, 2022:

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