14. Unlike traditional regulated utilities,[2] which have a process for recovering certain costs through electricity rates, Talen Montana is a "merchant power producer." Talen Montana sells power from Colstrip into the wholesale market.

15. Thus, Talen Montana has no "captive ratepayer." While regulated utilities have a set customer base, Talen Montana does not, as its wholesale customers have access to an open market. The market and its participants can always favor a different electricity producer if Talen Montana's power production costs are too high. Additionally, unlike regulated utilities that may be able to recover capital expenditures for new pollution controls through rates, Talen Montana cannot pass on such costs to its customers through rate adjustments.

16. Rather, Talen Montana is subject to market rates for its electricity and must rely on those market prices to pay for any new capital expenditures. Such prices may not reflect the additional costs incurred. The need for substantial upfront investment can put strains on financial resources and expose the company to risks.

[2] Utilities, such as investor-owned utilities or public utilities, operate under a highly-regulated framework where the utility company owns the generation and transmission necessary to serve its end-use customers and manages the system operations to serve its customers. These utilities are regulated by state utility commissions. Such regulation typically includes the setting of rates that are intended to allow the utility to recover a reasonable rate of return on its investments. Thus, a regulated utility may (or may not) be able to recover through rates the costs for installing facility upgrades (such as pollution control equipment under the MATS Final Rule), dependent on the approval of state regulators.