11. Prejudice to NorthWestern of the Proposed Rule

NorthWestern has been materially and uniquely prejudiced by the Proposed Rule. The 2023 RTR acknowledges that Colstrip will require far more extensive and expensive capital investments than any other facility subject to the Rule. RTR at 9. Indeed, the entire rationale for the Proposed Rule – that existing EGUs can attain additional emissions reductions at minimal cost – does not apply to Colstrip.

As revealed in the 2017 and 2019 ERPP's and 2020 ERPP supplement, NorthWestern did not plan for the Proposed Rule and Proposed Rule Costs, because it had no reason to anticipate them. As a result, NorthWestern made major capital commitments to improve integration of renewables, grid reliability, and transmission capacity. These all advance NorthWestern's progress toward Net Zero 2050. But these investments depended critically on the assumption that Colstrip would remain an essential component of NorthWestern's portfolio through approximately 2042, and that major new emissions controls to address mercury and HAPS would not be necessary given Colstrip's compliance with the performance objectives of the original MATS rule, the regional haze rule, and the statutory standards in the Clean Air Act. The Proposed Rule (as well as other regulatory initiatives detailed by Talen) would upend these assumptions.

NorthWestern also notes that the Proposed Rule, in combination with the other proposed rules, disincentivizes superior performance. As detailed by Talen, the venturi scrubbers control both sulfur dioxide and fPM. Colstrip has been a high performer in SO_2 emission reduction for years because of that system, but under the Proposed Rule Colstrip would be punished for having "wrong" system to control fPM, in comparison to other facilities.

No other utility bears anywhere close to the burden that NorthWestern would bear under the Proposed Rule. And, because Colstrip essentially serves only Montana, no other State would bear anywhere close to the burden that Montana electricity customers would bear.

12. Statutory and Administrative Procedure Act deficiencies with the Proposed Rule

The Proposed Rule is unlawful under Clean Air Act Section 112(d)(6). That Section provides that EPA must take into account "developments in practices, standards, and control technologies" in determining whether a revision in standards is necessary. EPA purports to satisfy this requirement by citing to performance data from 2017 to 2021, and opining that facilities have performed better and at lower costs than anticipated when the MATS Rule was promulgated in 2012. But this dataset is selective and misleading. All the performance and cost metrics EPA now relies on were known to EPA when it released the 2020 RTR. EPA has withdrawn its prior "Appropriate and Necessary" determination, but it has not withdrawn the 2020 RTR. As a result, the 2023 RTR is *not* based on "developments in practices, standards, and control technologies" since the prior

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