

behalf of the Owners” and must construct, operate, and maintain Colstrip in accordance with Prudent Utility Practice.¹⁰

28. Given the differing business models and competing state regulatory considerations among the owners, Talen Montana—as operator—finds itself stuck in the middle from an economic perspective because, however Talen Montana interprets its duty as operator in this matter, it is likely to antagonize one or more of its co-owners. Additionally, as Colstrip operator Talen Montana has no independent source of funding. Talen Montana has only what is advanced or recovered from the

¹⁰ This is stated in Section 3(b) of the Colstrip Units 3& 4 Ownership and Operation Agreement (“O&O Agreement”). In O&O Agreement Section 1(r):

“Prudent Utility Practice” at any particular time means either any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs, including recreational facilities, and any other programs or facilities, reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. Prudent Utility Practice shall also include those practices, methods and acts that are required by applicable laws and final orders or regulations of regulatory agencies having jurisdiction.