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ATTORNEYS FOR PLAINTIFF
TALEN MONTANA, LLC

ANGIE CHARKS, Clerk of District Court
By MARY M GOYINS Deputy Clerk

FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA
COUNTY OF LEWIS & CLARK

Talen Montana, LLC,

Plaintiff,

vs.

PPL Corporation, PPL Capital Funding, Inc.,
PPL Electric Utilities Corp., PPL Energy
Funding Corp., Paul A. Farr, Mark F. Wilten,
Peter J. Simonich, William H. Spence, Rodney
C. Adkins, Frederick M. Bernthal, John W.
Conway, Philip G. Cox, Steven G. Elliott,
Louise K. Goeser, Stuart E. Graham, Stuart
Heydt, Raja Rajamannar, Craig A. Rogerson,
Natica von Althann, Keith H. Williamson,
Armando Zagalo de Lima, and DOES 1-50,

Defendants.

Case No. CDV 2018-1299

Judge: _____

COMPLAINT

Plaintiff Talen Montana, LLC (f/k/a PPL Montana, LLC) (“PPL Montana” or “Talen Montana”) brings this Complaint against Defendants PPL Corporation (“PPL”), PPL Capital Funding, Inc., PPL Electric Utilities Corp., PPL Energy Funding Corp., Paul A. Farr, Mark F. Wilten, Peter J. Simonich, William H. Spence, Rodney C. Adkins, Frederick M. Bernthal, John W. Conway, Philip G. Cox, Steven G. Elliott, Louise K. Goesser, Stuart E. Graham, Stuart Heydt, Raja Rajamannar, Craig A. Rogerson, Natica von Althann, Keith H. Williamson, Armando Zagalo de Lima, and DOES 1-50 (collectively, “Defendants”). Talen Montana alleges as follows:

I. SUMMARY OF THE ACTION

1. This case arises out of yet another chapter in Montana’s long history of out-of-state corporations exploiting Montana’s valuable resources, shipping the profits out of state, abandoning operations in the State, and attempting to shift responsibility to the State to clean up those abandoned operations. Here, the valuable resources were power generating assets in Montana—assets that the Montana Power Company’s (“MPC”) ratepayers had bought and paid for through regulated rates over the last century. In December 1999, after Montana deregulated its electricity market, PPL, a Pennsylvania-based utility, acquired MPC’s generating assets in Montana. PPL Montana was the entity PPL used to acquire the assets.

2. With the Montana assets in hand, PPL took full advantage of historically high electricity prices that followed deregulation of Montana’s electric power market, extracting substantial profits from its Montana operations, including from Montana electricity customers through energy sales to MPC and later NorthWestern Corp. (“NorthWestern”), another Montana utility. PPL then transferred those profits from PPL Montana to PPL and its affiliates in Pennsylvania—totaling at least \$325 million through 2012.

3. By 2012, however, PPL had exhausted its ability to profit legitimately from PPL Montana. The electricity market in the Northwest had weakened, and PPL Montana was no longer contributing significant profits to PPL. In fact, PPL Montana was at best a break-even operation with a deteriorating financial outlook. Moreover, it faced significant future liabilities due to environmental remediation obligations primarily connected to its coal-fired assets.

4. At the same time, PPL needed money for operations outside of Montana. In 2010 and 2011, PPL had taken on significant debt to fund approximately \$13 billion in acquisitions in Kentucky and the United Kingdom. Unwilling to deal with the financial stress from declining Montana profits and the debt burden from these acquisitions by cutting its dividend or issuing additional shares (which would have imposed a burden on PPL shareholders, including its officers and directors), Defendants concocted a scheme to strip improperly the only valuable asset out of PPL Montana by selling its Montana-based hydroelectric facilities and transferring the proceeds of the sale to PPL in Pennsylvania. In November 2014, PPL Montana completed a sale of its hydroelectric assets to NorthWestern for approximately \$900 million and immediately distributed the proceeds, net of taxes, out of PPL Montana and up through its chain of ownership to PPL and its wholly owned subsidiaries (the “Distribution”).

5. By stripping this value out of PPL Montana and disregarding PPL Montana’s substantial liabilities, as asserted herein, Defendants rendered PPL Montana insolvent and unable to fund its significant obligations to the citizens of Montana—both for environmental remediation, as well as obligations to other creditors such as its employees’ and former employees’ pension plan. Following the sale, all that remained at PPL Montana were its coal-fired assets, which are projected to generate negative cash flows for the foreseeable future and are burdened with substantial environmental and other liabilities.

6. The scheme to strip all of the real value out of PPL Montana—which was executed by PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., PPL Energy Funding Corp., and PPL officers, directors, and employees with control over PPL Montana—breached fiduciary duties owed to PPL Montana, unjustly enriched PPL, breached the contractual obligations PPL Montana’s managers owed to the company and tortiously interfered with those contractual relations.

7. Until June 1, 2015, PPL Montana was a wholly owned subsidiary of PPL. On June 1, 2015, as the result of a spin-off transaction (the “Spin-Off”), PPL Montana became a subsidiary of a new company, unaffiliated with PPL, called Talen Energy Corporation (“Talen”) and was renamed Talen Montana shortly thereafter. PPL-appointed managers and officers, however, dominated and controlled Talen Montana until December 6, 2016.

8. Through this lawsuit, PPL Montana (now Talen Montana) seeks to recover the money defendants improperly removed, so that Talen Montana will have the resources to fund its obligations in Montana. To this end, Talen Montana will establish a Montana state remediation trust for any recovery in this action. Assets from the trust will be deployed to fund and pay for Talen Montana’s environmental liabilities, and to satisfy Talen Montana’s other creditors, such as Talen Montana’s qualified pension plan.

9. PPL Montana brings this action for: (i) breach of fiduciary duty, (ii) aiding and abetting breach of fiduciary duty, (iii) breach of the LLC Agreement, (iv) breach of implied duty of good faith and fair dealing, (v) tortious interference with the LLC Agreement, (vi) negligent misrepresentation, (vii) constructive fraud, (viii) deceit, (ix) unjust enrichment, and (x) constructive trust. Moreover, considering the nature of the conduct and the important interests at issue, PPL Montana also seeks (xi) an award of punitive damages.

II. PARTIES

A. Plaintiff

10. Plaintiff Talen Montana, LLC (f/k/a PPL Montana, LLC) ("PPL Montana" or "Talen Montana") is a single-member Delaware LLC with its principal place of business located in The Woodlands, Texas. Prior to June 1, 2015, PPL Montana was a subsidiary of PPL. On June 1, 2015, as the result of the Spin-Off, Talen became PPL Montana's ultimate parent, unaffiliated with PPL. Talen is a Delaware corporation with its principal place of business in The Woodlands, Texas. Talen holds PPL Montana (now Talen Montana) through a series of intermediate subsidiaries that are Delaware entities.

B. Defendants

11. Defendant PPL Corporation ("PPL") is a Pennsylvania corporation with its headquarters in Allentown, Pennsylvania. PPL is a Fortune 500 company and one of the largest utility companies in the United States, with subsidiaries delivering electricity to customers in Pennsylvania, Kentucky, Virginia, Tennessee, and the United Kingdom. In 1999, PPL formed PPL Montana to own and operate its power generation business in Montana, which included 11 hydroelectric facilities and one storage dam in Montana, a partial interest in the 2,100-megawatt four-unit Colstrip coal-fired power plant in southeastern Montana ("Colstrip"), and the J. E. Corette coal-fired power plant in Billings, Montana ("Corette"). PPL held PPL Montana as an indirect, wholly owned subsidiary from 1999 to 2015. PPL is the parent holding company of Defendants PPL Capital Funding, Inc., PPL Energy Funding Corp. and PPL Electric Utilities Corp.

12. Defendant PPL Capital Funding, Inc. is incorporated in Delaware with its principal place of business in Allentown, Pennsylvania. PPL Capital Funding, Inc. is a financing

subsidiary of PPL that provides financing for the operations of PPL and certain subsidiaries. Debt issued by PPL Capital Funding is guaranteed as to payment by PPL.

13. Defendant PPL Electric Utilities Corp. is incorporated in Pennsylvania with its principal place of business in Allentown, Pennsylvania. PPL Electric Utilities Corp. is a public utility subsidiary of PPL engaged in the regulated distribution of electricity.

14. Defendant PPL Energy Funding Corp. is incorporated in Pennsylvania with its principal place of business in Allentown, Pennsylvania. PPL Energy Funding Corp. is a subsidiary of PPL and a former indirect parent of PPL Montana.

15. Defendant Paul A. Farr is a resident of Pennsylvania. Farr authorized and directed the Distribution as a member of PPL Montana's Board of Managers, and directed its receipt as a senior executive officer of PPL. Farr was integral to the establishment of PPL's competitive power generation business in Montana in 1999 and equally integral to the Spin-Off in 2015. Claims asserted herein against Farr are based on his acts and omissions prior to the Spin-Off when he was a PPL executive. After the Spin-Off, Farr became Chairman, President, and Chief Executive Officer of Talen, and remained in that role until December 6, 2016.

16. Defendant Mark Wilten is a resident of Pennsylvania. Wilten authorized the Distribution as a member of PPL Montana's Board of Managers, and directed its receipt as a senior executive officer of PPL. Wilten resigned as a manager of PPL Montana after the Spin-Off but continued to work for PPL. Wilten left PPL in 2017. Claims asserted herein against Wilten are based on his acts and omissions prior to the Spin-Off when he was a member of PPL Montana's Board of Managers.

17. Defendant Peter J. Simonich is a resident of Montana. Simonich authorized the Distribution as a member of PPL Montana's Board of Managers and left PPL Montana after the

Spin-Off. Claims asserted herein against Simonich are based on his acts and omissions prior to the Spin-Off when he was a member of PPL Montana's Board of Managers.

18. Defendants William Spence (resident of Pennsylvania), Rodney Adkins (resident of Florida), Frederick Bernthal (resident of Washington, D.C.), John Conway (resident of Pennsylvania), Philip Cox (resident of United Kingdom), Steven Elliott (resident of Pennsylvania), Louise Goeser (resident of Texas), Stuart Graham (resident of Pennsylvania), Stuart Heydt (resident of Pennsylvania), Raja Rajamannar (resident of Pennsylvania), Craig Rogerson (resident of Michigan), Natica von Althann (resident of Pennsylvania), Keith Williamson (resident of Missouri), and Armando Zagalo de Lima (resident of New York) were on PPL's Board of Directors at the time of the Distribution. Defendant Spence was also on the board of managers of several intermediate subsidiaries that approved the Distribution. Claims asserted herein against these current and former PPL directors are based on their acts and omissions as PPL directors prior to the Spin-Off. Defendants Bernthal, Cox, Goeser, and Graham moved to Talen's Board of Directors after the Spin-Off, where they served until December 6, 2016.

19. DOES 1-50 are potential, additional subsequent transferees of the Distribution that are not known or knowable to Plaintiff at this time.

III. JURISDICTION AND VENUE

20. This Court has jurisdiction over Defendants because they engaged in tortious conduct directed at, and with an impact in, the State of Montana, and removed monies from the State of Montana. Specifically, Defendants caused the sale of PPL Montana's Montana-based hydroelectric assets, and then caused the improper Distribution of the proceeds from that sale out of PPL Montana, leaving PPL Montana without sufficient funds to meet its environmental and other obligations in this State. Through this conduct, Defendants engaged with PPL Montana, a

business that had its principal place of business in Montana at the time of the acts that are the subject of this Complaint. M. R. Civ. P. §§ 4(B), (D), (F).

21. This Court has original jurisdiction over the subject matter of this action. Mont. Code Ann. § 3-5-302(1)(b).

22. Venue is proper in this Court because Plaintiff's claims arose, in part, in Lewis & Clark County, the site of the Hauser Hydroelectric Project and the Holter Hydroelectric Project, and the proceeds from the sale of these assets was improperly diverted to Plaintiff's detriment. Therefore, tortious conduct within Lewis & Clark County was a cause of Plaintiff's injuries. Mont. Code Ann. §§ 25-2-115; 25-2-118(2); 25-2-121(1)(b), 25-2-122(1)(b), (2)(a), (2)(b), (3)(a), (3)(b).

IV. FACTUAL BACKGROUND

A. PPL purchases MPC's generating fleet through PPL Montana in 1999

23. In 1997, the Montana legislature enacted the Electric Utility Industry Restructuring and Customer Choice Act to deregulate Montana's electric power markets. In response, MPC put its generation assets up for sale and, in 1998, announced that PPL was the successful bidder. The sale to PPL, which was a strategic acquisition to grow its merchant power business, was completed in 1999, with PPL acquiring the assets for more than \$769 million.

24. The transaction was a major milestone in the growth of PPL's merchant power business. The purchase included 11 hydroelectric facilities and a storage dam, and ownership interests in Colstrip and Corette.

B. PPL enjoyed substantial profits from PPL Montana until its coal-fired assets began weighing on profitability

25. For the decade following PPL's acquisition of MPC's assets, PPL's investment in Montana proved to be very profitable. Montana's deregulation was closely followed by the

California Power Crisis in 2000 and 2001, forcing Montana customers to compete for power with out-of-state customers, including customers in California and the Pacific Northwest. Deregulation exposed Montana customers to volatile power markets, and power prices in Montana increased as much as 50% over pre-deregulation prices. As a result, PPL Montana was extremely profitable, resulting in more than \$325 million in profits being exported to PPL from 1999 to 2012.

26. By 2012, PPL's fortunes in Montana began to change dramatically, due to a combination of environmental activism, stricter regulations, increased fuel costs, and competition from subsidized renewable generation. These fundamental changes increased generation costs at Colstrip and Corette and depressed market prices for electricity in Montana and the Pacific Northwest.

27. On the regulatory front, Montana passed a reregulation law in 2007 allowing NorthWestern, the largest regulated utility in Montana and historically one of PPL Montana's largest customers, to own generation assets in direct competition with PPL Montana. In 2012, Montana's Renewable Portfolio Standard, which required Montana's public utilities to purchase a proportion of their electricity from renewable sources, increased from a required percentage of five percent to ten percent. None of PPL Montana's assets, including the hydroelectric facilities, qualified as renewable sources.

28. The power market in Montana softened as a result of subsidized renewable generation and NorthWestern's reentry into the generation business, causing PPL Montana's profits to plummet. The problem was particularly acute for the operations of Colstrip and Corette because PPL Montana was required to pay rising prices under long-term coal supply contracts as power prices were dropping. As a result, Colstrip and Corette's financial projections

were negative into the foreseeable future. While the hydroelectric assets were projected to generate a positive margin, it was not sufficient to offset the negative margin from Colstrip and Corette.

29. PPL Montana's increasing fuel costs were not its coal-fired operation's only problem. It was also becoming apparent that the coal-fired operations faced enormous environmental exposure from new regulatory obligations and increased activism. In 2010, the United States Environmental Protection Agency ("EPA") published an initial draft of its Coal Combustion Residual ("CCR") rules. Although the CCR rules would not be finalized and implemented for several years,¹ it was clear at the time that all coal-fired power plants, including Colstrip and Corette, stood to face strict and costly disposal requirements related to coal ash. The rules promised to be particularly costly as to PPL Montana's Colstrip plant, which had experienced issues related to seepage of coal ash from ponds and into groundwater dating back to MPC's ownership.

30. That same year, the Sierra Club launched its "Beyond Coal" campaign, the "main objective" of which was to "mobiliz[e] grassroots activists in local communities to advocate for the retirement of old and outdated coal plants and to prevent new coal plants from being built." The four Colstrip generating units, which were built in the 1970's and 1980's and together comprised the second largest coal-fired plant west of the Mississippi River, were an obvious target for this campaign.

31. Colstrip's environmental problems only intensified in 2012. In July of that year, pursuant to an Administrative Order on Consent ("AOC"), the Montana Department of Environmental Quality ("MDEQ") imposed extensive closure, remediation, and financial

¹ The final version of the CCR rules was issued on December 19, 2014 and published in the Federal Register on April 17, 2015.

obligations on PPL Montana due to historical seepage from Colstrip's ash ponds. Under the AOC, PPL Montana was required to provide to MDEQ, within five years, financial assurance for the significant costs associated with the future closure, remediation, and monitoring of Colstrip's ash ponds. In fact, PPL Montana (now Talen Montana) is currently in negotiations with MDEQ regarding these very issues.

32. Also in July 2012, as part of its Beyond Coal Campaign, the Sierra Club served notice of intent to sue PPL Montana under the Clean Air Act for civil penalties and injunctive relief concerning Colstrip. A formal lawsuit followed in March 2013. The remedies sought in the litigation included the installation of additional pollution control equipment at a cost of several hundred million dollars and significant financial penalties. Ultimately, the lawsuit was resolved in 2016 pursuant to a settlement requiring the closure of two of the Colstrip plant's four units by July 1, 2022.

33. These same factors affecting the Colstrip plant led to the closure of Corette. In September 2012, PPL Montana announced that the facility would need to be "mothballed" in April 2015, primarily because of increased compliance costs resulting from new EPA emission-reduction regulations that would render the plant uneconomical.

C. PPL needed funds for its other ventures and sought to avoid a dividend cut

34. By 2010, PPL started shifting its corporate strategy away from the deregulated, merchant generation business and spent billions of dollars to acquire additional, regulated utilities. In 2010, PPL purchased a group of regulated utilities in Kentucky for \$7.6 billion and, in 2011, purchased a group of regulated utilities in the United Kingdom for \$5.6 billion. PPL incurred substantial debt to fund these acquisitions. In addition to spending billions of dollars to acquire these utilities, PPL also projected that it would spend more than \$15 billion on capital

projects between 2011 and 2015, in part to modernize its existing utility operations in Pennsylvania.

35. In the years following these acquisitions, PPL became financially stressed as the result of declining margins from its merchant power business (including actual operating losses in Montana) and the debt burden from its utility acquisitions and capital spending programs. Among other things, these circumstances put significant pressure on PPL's dividend. Publicly, PPL stated that its dividend was supported by regulated earnings. In fact, given that a significant percentage of its regulated earnings were foreign earnings from the United Kingdom that were difficult to repatriate tax-free to the U.S., and that its regulated utilities in Pennsylvania, the United Kingdom, and Kentucky had a large cash-driven capex plan, in reality the dividend was heavily supported by PPL's unregulated business' cash flows. Further, upon conversion of PPL's then convertible notes (from debt to equity) that were used, in part, to fund PPL's growth plan, PPL's cash dividend funding needs increased significantly.

36. As a result, PPL had to do something to shore up its balance sheet. Obvious options would have been to cut PPL's dividend or issue more PPL stock. But these options would have imposed a cost on PPL's shareholders, which included its officers and directors. To avoid dividend pressure during an aggressive growth phase, and avoid a significant stock decline (as the common stock dividend yield supported PPL's stock price), PPL's officers and directors decided, among other things, to strip the value out of PPL Montana and leave it as an empty shell to face its mounting environmental and other liabilities.

D. PPL's scheme to strip the value out of PPL Montana and leave it an empty shell to face its mounting liabilities

37. PPL had initially attempted to sell all of PPL Montana's assets, soliciting bids in September 2012. But it quickly became apparent that, while PPL Montana's hydroelectric assets

had significant value, its coal-fired assets had none. In fact, NorthWestern submitted a \$740 million bid for only PPL Montana's hydroelectric assets, as well as a bid of \$400 million for *both* the hydroelectric assets *and* the coal-fired assets—suggesting a substantial negative valuation of the coal-fired assets. Realizing that it would not get an economic return for its sale of all of PPL Montana's assets, PPL decided to take the hydroelectric assets' value for itself and leave the negative value of the coal-fired assets behind to the detriment of PPL Montana.

38. To implement its scheme, PPL took advantage of the domination and control that it exercised over PPL Montana. PPL indirectly owned all of PPL Montana through intermediate subsidiaries that PPL also controlled. At the time of the Distribution, PPL (or its affiliates) employed all three managers on PPL Montana's Board of Managers (Defendants Farr, Wilten, and Simonich) and nearly all of its officers.² Two of these PPL-employed managers, Defendants Farr and Wilten, also served as PPL's Chief Financial Officer and Treasurer, respectively, and in those roles, were primarily responsible for managing PPL's increasing debt load. Farr was also heavily involved in PPL's mergers and acquisitions activity and would have formulated PPL's plans for selling the PPL Montana assets, taking into account his in-depth knowledge of PPL Montana's assets and liabilities. Thus, it was largely Farr, as PPL's CFO and a central player in PPL's oversight and management of PPL Montana, who orchestrated the scheme with the approval and participation of PPL's Board of Directors, the other members of the PPL Montana Board of Managers, and PPL officers who served as Managers with PPL Montana and other PPL subsidiaries.

39. As their first step in the scheme, in September 2013, PPL caused PPL Montana to enter into an agreement to sell PPL Montana's hydroelectric assets to NorthWestern for

² PPL also employed the members of the boards of managers of various intermediate subsidiaries with control over PPL Montana.

approximately \$900 million. On November 17, 2014, the sale to NorthWestern closed, and PPL Montana collected a cash payment of over \$900 million.

40. On November 17, 2014, the same day that the sale to NorthWestern closed, PPL caused PPL Montana to make the Distribution, in which the proceeds from the hydroelectric sale were distributed up to PPL and its affiliates in the following sequence:

- a) The PPL-controlled Board of Managers of PPL Montana (Defendants Farr, Wilten, and Simonich) authorized a distribution of the hydroelectric sale proceeds to PPL Montana Holdings, LLC.
- b) The PPL-controlled Board of Managers of PPL Montana Holdings, LLC (Defendants Farr, Wilten, and Simonich) then authorized a distribution of the hydroelectric sale proceeds to PPL Generation, LLC.
- c) The PPL-controlled Board of Managers of PPL Generation, LLC then authorized a distribution of the hydroelectric sale proceeds to PPL Energy Supply, LLC.
- d) The PPL-controlled Board of Managers of PPL Energy Supply, LLC then authorized a distribution of the hydroelectric proceeds to Defendant PPL Energy Funding Corporation.
- e) On information and belief, Defendant PPL Energy Funding Corporation distributed the proceeds to PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corporation, or other PPL affiliates shortly thereafter.

41. On information and belief, the Distribution was for no or inadequate value to PPL Montana. Remarkably, neither PPL nor the PPL-controlled managers (including Defendants Farr, Simonich, and Wilten) who approved the Distribution at every step implemented any process to determine whether PPL Montana would be solvent after the Distribution or otherwise protect the interests of PPL Montana and its creditors. On information and belief, Defendants did not obtain a solvency opinion before causing the Distribution. Nor did they retain an external advisor. Of course, particularly given Farr's intimate knowledge of PPL Montana's financial condition, he and the other Defendants knew that any such process would not result in

the outcome they desired. Intent on taking the money out of PPL Montana, they simply did not care what impact the Distribution would have on PPL Montana and its creditors.

42. Months later, PPL completed the Spin-Off of PPL Montana, PPL Montana Holdings, LLC, PPL Generation, LLC, and PPL Energy Supply, LLC. But the Distribution remained with Defendant PPL and its wholly owned subsidiaries, including Defendants PPL Capital Funding, Inc., PPL Electric Utilities Corporation, and PPL Energy Funding Corporation.

E. The Distribution rendered PPL Montana insolvent

43. The Distribution rendered PPL Montana insolvent (disregarding the value of the claims asserted herein). After the Distribution, PPL Montana's ownership interests in Colstrip and Corette were its only material, tangible assets. PPL and PPL Montana's PPL-controlled managers knew, at the time of the Distribution, that both facilities were deeply troubled and burdened by mounting obligations. Colstrip had been assigned a fair market valuation of approximately \$5 million (in connection with the December 2013 termination of a sale-leaseback arrangement for the Colstrip plant), and Corette would be "mothballed" within a few months' time.

44. PPL and PPL Montana's PPL-controlled managers also knew, at the time of the Distribution, that PPL Montana's liabilities substantially outstripped the value of these assets. Under the 2012 AOC with the MDEQ, PPL Montana had substantial closure and remediation obligations associated with Colstrip's ash ponds. At the time of the Distribution, the Asset Retirement Obligation ("ARO") associated with the AOC was grossly understated on PPL Montana's books at approximately \$1 million. Confirming insolvency, PPL Montana's late-2014 business plan projected negative free cash flow over the next five years after accounting for expected environmental remediation costs.

45. The liabilities disclosed on PPL Montana's balance sheet were concerning enough; the undisclosed reality was far worse. Projections prepared by Geosyntec, PPL Montana's environmental contractor, estimated that it would cost Colstrip \$198 million to comply with the EPA's new CCR rules. In addition, there was a reasonable expectation that PPL Montana would face significant additional AOC costs. At the time of the Distribution, PPL and PPL Montana's PPL-controlled managers knew of these estimates and assessments but concealed them from PPL Montana. Consistent with these assessments, the actual projected costs to comply with the 2012 AOC are approximately *\$500 million* in the aggregate.

46. No reasonable cash flow projections showed PPL Montana with adequate future income or assets to pay its liabilities. Under all three solvency tests—balance sheet insolvency, inability to pay debts when due, and unreasonably small capital—the Distribution rendered PPL Montana insolvent. And its PPL-controlled managers knew, or recklessly ignored, that the Distribution would have precisely this effect.

47. As further evidence of insolvency, PPL knew that an arm's-length purchaser, NorthWestern, had assigned a significant negative value for the coal-fired assets during the recently completed sales process for PPL Montana's hydroelectric assets.

F. Until December 2016, PPL Montana was dominated by participants in the improper scheme

48. Mere months after the Distribution, PPL contributed PPL Montana to Talen as part of the Spin-Off on June 1, 2015, at which time PPL Montana was renamed Talen Montana. While the claims asserted in this Complaint are based on Defendants' conduct prior to the Spin-Off, it is significant that individuals who had perpetrated PPL's scheme before the Spin-Off continued to dominate and control PPL Montana after it became Talen Montana: Defendant Farr became Talen's new Chairman, President, and CEO; four members of PPL's board of directors

who had approved the Distribution (Defendants Bernthal, Cox, Goeser, and Graham) sat with him on Talen's board; and together, these five individuals comprised a majority of Talen's eight-member board. Many of PPL Montana's pre-spin, PPL-controlled officers became its new managers. This situation would persist for another eighteen months, until December 6, 2016.

49. In addition, the fact and extent of PPL Montana's (now Talen Montana's) insolvency as a result of the Distribution was fraudulently concealed from PPL Montana and its creditors until December 6, 2016, when the entity was no longer dominated by participants in the improper scheme. An entity like PPL Montana can only gain knowledge imputed through its agents. As a matter of law, agents' knowledge is not imputed where they are working adversely to the interests of the company. Such was the case at PPL Montana. In approving the Distribution despite knowing that it would render PPL Montana insolvent, PPL Montana's PPL-controlled managers were working adversely to the interests of PPL Montana and its creditors (whose interests PPL Montana's fiduciaries were required to consider in any decision that would render PPL Montana insolvent).

50. Due to PPL Montana's (later Talen Montana's) domination and control by the participants in the improper scheme and the fraudulent concealment by Defendants, Talen Montana could not reasonably have taken action regarding the Distribution or learned the truth until December 6, 2016, at the earliest.

V. CAUSES OF ACTION

COUNT I BREACH OF FIDUCIARY DUTY (against all Defendants)

51. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

52. By virtue of Defendants' exercise of dominance and control over PPL Montana, Defendants owed fiduciary duties to PPL Montana (with due consideration for PPL Montana's residual risk holders which, in insolvency, included creditors). Moreover, Farr, Wilten, and Simonich also owed fiduciary duties to PPL Montana (with due consideration for its residual risk holders which, in insolvency, including creditors) by virtue of their membership on the Board of Managers of PPL Montana.

53. The Distribution to PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., and PPL Energy Funding Corp. of funds owned by PPL Montana was an interested transaction for which a duty of entire fairness was owed. Defendants breached this duty by causing the Distribution, which was for inadequate or no value to PPL Montana, and which rendered PPL Montana insolvent.

54. As a direct and proximate consequence of Defendants' breach, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT II
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp.,
and PPL Energy Funding Corp.)

55. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

56. If PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., and PPL Energy Funding Corp. are determined not to owe fiduciary duties (Count I), they should be found liable for aiding and abetting breach of fiduciary duty.

57. Farr, Wilten, and Simonich, as the Board of Managers of PPL Montana, owed fiduciary duties to PPL Montana (with due consideration for its residual risk holders which, in

insolvency, included creditors). As to all conflicted or interested party transactions, Farr, Wilten, and Simonich owed PPL Montana a duty of entire fairness.

58. The Distribution to PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., and PPL Energy Funding Corp. of funds owned by PPL Montana was an interested transaction for which a duty of entire fairness was owed. Farr, Wilten, and Simonich breached this duty by approving the Distribution, which was for inadequate or no value to PPL Montana, and which rendered PPL Montana insolvent.

59. The other Defendants knowingly participated in this breach of fiduciary duty by participating in the Distribution with the knowledge that, by approving the Distribution, Farr, Wilten, and Simonich were breaching their fiduciary duties by rendering the entity insolvent.

60. As a direct and proximate consequence of the subject Defendants' aiding and abetting these breaches of fiduciary duty, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT III
BREACH OF THE LLC AGREEMENT
(against Farr, Wilten, and Simonich)

61. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

62. As Managers of the Board of Managers of PPL Montana, Defendants Farr, Wilten, and Simonich were bound by the Amended and Restated Limited Liability Company Agreement of PPL Montana, LLC, dated June 5, 2014 ("LLC Agreement").

63. The LLC Agreement provides that PPL Montana was authorized, through its Board of Managers, to do all things permitted to be done by limited liability companies under applicable law. Applicable law prohibited PPL Montana's managers from making a distribution

if that distribution would exceed the fair value of the company or leave PPL Montana unable to pay its debts.

64. In approving the Distribution, which rendered PPL Montana insolvent, Defendants Farr, Wilten, and Simonich breached the LLC Agreement.

65. As a direct and proximate result of this breach, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT IV
BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING
(against Farr, Wilten, and Simonich)

66. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

67. In the alternative, if it is determined that approval of the Distribution does not breach an express term of the LLC Agreement (Count III), then the approval of the Distribution by Farr, Wilten, and Simonich constitutes a breach of the non-waivable duty of good faith and fair dealing implied in every contract.

68. As Managers of the Board of Managers of PPL Montana, Defendants Farr, Wilten, and Simonich were bound by PPL Montana's LLC Agreement.

69. A non-waivable covenant of good faith and fair dealing is implied in every contract, including the LLC Agreement.

70. Defendants Farr, Wilten, and Simonich violated this implied covenant of good faith and fair dealing by approving the Distribution for no or inadequate value to PPL Montana and rendering PPL Montana insolvent.

71. As a direct and proximate result of this breach, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT V
TORTIOUS INTERFERENCE
(against all Defendants)

72. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

73. The operation of PPL Montana was governed by the LLC Agreement, which was a valid contract.

74. Defendants PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., and PPL Energy Funding Corp., without right or justification, interfered with the LLC Agreement, and the covenant of good faith and fair dealing implied under the LLC Agreement, by causing the Distribution, which rendered PPL Montana insolvent.

75. Plaintiff also was and is party to contracts with creditors including, without limitation, the 2012 AOC. Plaintiff additionally had past, present, and future business relationships with creditors and prospective economic advantage through such business relationships.

76. All Defendants, without right or justification, interfered with these contracts, business relations, and prospective economic advantages.

77. These Defendants' conduct was for the purpose of causing damage or loss to Plaintiff.

78. As a direct and proximate result of this breach, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT VI
NEGLIGENT MISREPRESENTATION
(against all Defendants)

79. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

80. At the time of the Distribution, Defendants negligently misrepresented to PPL Montana that PPL would arrange sufficient financial support for PPL Montana's future environmental and other liabilities. PPL did not inform PPL Montana that it in fact intended to do the opposite: that PPL would leave no support or allowance for PPL Montana's future liabilities after the Spin-Off.

81. Defendants knew that this representation was false.

82. Plaintiff was unaware that the representation was false and justifiably relied on it.

83. As a result of this reliance, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT VII
CONSTRUCTIVE FRAUD
(against all Defendants)

84. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

85. At the time of the Distribution, Defendants fraudulently misrepresented to PPL Montana that PPL would arrange sufficient financial support for PPL Montana's future environmental and other liabilities. PPL did not inform PPL Montana that it in fact intended to do the opposite: that PPL would leave no support or allowance for PPL Montana's future liabilities after the Spin-Off.

86. The falsity of the misrepresentation was known to Defendants.

87. Plaintiff was unaware of the falsity of the misrepresentation and justifiably relied on it.

88. As a result of this reliance, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT VIII
DECEIT
(against all Defendants)

89. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

90. At the time of the Distribution, Defendants represented as true facts that they knew were not true. Specifically, Defendants suggested that PPL would arrange sufficient financial support for PPL Montana's future environmental and other liabilities. PPL did not inform PPL Montana that it in fact intended to do the opposite: that PPL would leave no support or allowance for PPL Montana's future liabilities after the Spin-Off.

91. In doing so, Defendants suppressed facts that they were bound to disclose and misrepresented facts and information that were likely to mislead Plaintiff.

92. Defendants' deceit has been a proximate cause of loss and damage to Plaintiff.

93. As a result of this deceit, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proven at trial.

COUNT IX
UNJUST ENRICHMENT
(against Defendants PPL Corporation, PPL Capital Funding, Inc., PPL Electric Utilities Corp., PPL Energy Funding Corp., and DOES 1-50)

94. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

95. A benefit was conferred upon Defendants PPL Corporation, PPL Capital Funding, Inc., PPL Electric Utilities Corp., PPL Energy Funding Corp., and DOES 1-50 with the appreciation or knowledge of the benefit by Defendants. Specifically, these Defendants were unjustly enriched by the Distribution, which was made for no or inadequate value to PPL Montana, and which rendered PPL Montana insolvent.

96. These Defendants were unjustly enriched, at the expense of PPL Montana and its current and future creditors, including the State of Montana.

97. These Defendants executed the foregoing scheme for the wrongful purpose of ensuring PPL received the Distribution, thereby leaving PPL Montana insolvent.

98. These Defendants' continued retention of the Distribution is unjust. These Defendants took the money out of Montana, where it belonged to support remediation efforts, fund pension plans, and ensure a properly funded business could operate, and instead sent it to Pennsylvania to enhance their own corporate and personal profits.

99. Plaintiff has no adequate remedy at law.

100. Equity demands that relief issue to prevent these Defendants' unjust enrichment and that a constructive trust in favor of Plaintiff be imposed.

COUNT X
CONSTRUCTIVE TRUST
(against Defendants PPL Corporation, PPL Capital Funding, Inc., PPL Electric Utilities Corp., PPL Energy Funding Corp., and DOES 1-50)

101. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

102. On or about November 17, 2014, Defendants intentionally distributed, upon information and belief, a Distribution up to PPL Energy Funding, Corp. and subsequently, on

information and belief, to PPL, PPL Capital Funding, Inc., PPL Electric Utilities Corp., and/or DOES 1-50, leaving PPL Montana insolvent.

103. The imposition of a constructive trust is needed to prevent the unjust enrichment of these Defendants due to their wrongful conduct.

104. These Defendants have been unjustly enriched in that they currently possess hundreds of millions of dollars that rightfully belong to Plaintiff in order to pay its liabilities, including environmental liabilities and its pension plan. The money from the improper Distribution belongs in the state of Montana to pay remediation costs and pension plans of Montana state residents.

105. Plaintiff is entitled to the Distribution currently in these Defendants' possession.

106. Plaintiff has been injured and damaged by Defendants' wrongful taking of the Distribution.

107. As such, a constructive trust should be imposed.

COUNT XI
PUNITIVE DAMAGES
(against all Defendants)

108. Plaintiff repeats and realleges the foregoing allegations as though they were fully set forth here.

109. Defendants had knowledge of facts or intentionally disregarded facts that created a high probability of injury to the Plaintiff.

110. Defendants deliberately proceeded to act in conscious or intentional disregard of the high probability of injury to Plaintiff.

111. Defendants acted with indifference to the high probability of injury to Plaintiff.

112. For Defendants' actual malice, Plaintiff is entitled to an award of punitive damages in an amount to be proven at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. Order that Plaintiff may recover compensatory and punitive damages from Defendants for breach of fiduciary duty, and disgorge the profits that Defendants derived while in breach.

B. Order that Plaintiff may recover compensatory and punitive damages from Defendants for aiding and abetting breach of fiduciary duty, and disgorge the profits that Defendants derived while knowingly participating in those breaches.

C. Order that Plaintiff may recover compensatory and punitive damages against Defendants Farr, Wilten, and Simonich for breach of the LLC Agreement.

D. Order that Plaintiff may recover compensatory and punitive damages against Defendants Farr, Wilten, and Simonich for breach of the covenant of good faith and fair dealing implied under the LLC Agreement.

E. Order that Plaintiff may recover compensatory and punitive damages against Defendants for tortious interference with the LLC Agreement.

F. Order that Plaintiff may recover against PPL for unjust enrichment.

G. Order a constructive trust or extraordinary, equitable and/or injunctive relief as permitted by law, equity and the statutory provisions sued hereunder, and any other appropriate state law remedies; and

H. Grant such additional and further relief as this Court deems just and proper under the circumstances.

VII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: October 29, 2018

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