

DEQ-Talen SOEP/STEP Term Sheet

The following term sheet summarizes the key terms of the agreement-in-principle between Talen Montana, LLC (Talen Montana) and the Montana Department of Environmental Quality (MDEQ) to resolve the pending dispute between the parties related to the selection of a remedy for the Colstrip Steam Electric Station Units 1&2 Stage I and Stage II Evaporation Ponds (SOEP/STEP) area under the 2012 Administrative Order on Consent (AOC). This term sheet is not a final settlement agreement and does not create any legally binding obligations, rights, or commitments, but it is the intent of the parties to enter a final written and binding settlement agreement that incorporates the terms set forth herein.

As specified in Condition 8, signing this term sheet does not terminate dispute resolution. Dispute resolution remains ongoing until the MDEQ Director and an authorized representative of Talen Montana sign the final settlement agreement, or the MDEQ Director otherwise issues a final decision regarding this matter.

Condition 1:

MDEQ retains its selection of Alternative 10 as the remedy for the Colstrip Steam Electric Station SOEP/STEP area, but Talen Montana would be allowed to further evaluate the single additional alternative identified in Condition 1.a below and to petition MDEQ to change the SOEP/STEP remedy selection within a two-year period in accordance with the procedures described in Condition 2 below.

- a. The single additional alternative Talen Montana proposes to further evaluate would involve excavation and consolidation of ash above the groundwater, conceptually similar to Alternative 11 as presented in Talen's September 2020 Integrated Remedy Evaluation Report. However, the alternative would include changes to ash relocation from what Talen originally proposed under Alternative 11. Talen shall provide a summary of its single additional alternative to MDEQ prior to execution of the settlement agreement.
- b. Talen would be permitted to make additional refinements to the alternative identified in Condition 1.a based on additional information developed during the two-year period (prior to submitting the Request to Amend described in Condition 2) and/or in response to MDEQ's initial concerns/comments on the Request to Amend Remedy Selection described in Condition 2.
- c. During the course of the procedures described in this term sheet, Talen shall move forward with the remedial design for both Alternative 10 and the alternative identified in Condition 1.a, such that remedy implementation is not delayed by the procedures described in this term sheet.

Condition 2:

Within two years following the date of the settlement agreement between Talen Montana and MDEQ, Talen Montana would have the right to petition MDEQ to amend the remedy selection for the SOEP/STEP area. This process would involve the following:

- a. Within two years of the date of the settlement agreement, Talen Montana may petition MDEQ to change the SOEP/STEP remedy selection by submitting to MDEQ a Request to Amend Remedy Selection (Request to Amend). The Request to Amend shall be limited to an amendment of the SOEP/STEP remedy selection from Alternative 10 to the alternative identified in Condition 1.a. The Request to Amend shall include, at a minimum, (1) relevant information identified in Article VI.C.2 of the 2012 Administrative Order of Consent (AOC) relating to contents of a remedy evaluation report; (2) information on those remedy implementation elements identified in Article VI.D.1 of the AOC for both alternatives that are formulated during the two-year period (available information not relevant to a comparative analysis of the alternatives shall be submitted with the Request to Amend but may be included in an appendix); and (3) discussion of the factors identified in Condition 3. Nothing shall limit informal consultation with MDEQ during this period, the parameters of which would be worked out during future settlement discussions. The parties shall also include in the settlement agreement specific check-in points for the parties to discuss progress in advance of Talen Montana's Request to Amend to MDEQ.
- b. MDEQ's review of and response to the Request to Amend would, at minimum, include the following steps:
 - i. A detailed statement in writing to Talen Montana of any concerns related to the Request to Amend and any concerns specifically related to Talen Montana's preferred remedy. Talen Montana would then have the opportunity to respond in writing and provide a Revised Request to Amend prior to issuance of MDEQ's written decision. If appropriate to address MDEQ questions or concerns, the preferred remedy may be refined/amended in the Revised Request to Amend. Timing of review/comments to be worked out during the settlement discussions.
 - ii. Public notice and comment as determined necessary by MDEQ, to be specified in the settlement agreement.
 - iii. MDEQ's written decision on Talen Montana's Request to Amend or Revised Request to Amend shall include a detailed statement of the basis for MDEQ's decision, and shall include written consideration of the factors and evidence identified in Condition 3.
- c. MDEQ's written decision will not be final until Talen Montana's right to exercise dispute resolution (described in Condition 2.d) has expired without Talen Montana invoking dispute resolution, or until the completion of dispute resolution if invoked.

MDEQ's written decision will be marked as "Not Final – Subject to Dispute Resolution" until dispute resolution is complete or the option to invoke dispute resolution has expired.

- d. Talen Montana shall have the right to invoke dispute resolution following issuance of MDEQ's written decision. Talen Montana must provide notice that it is invoking dispute resolution within 15 days of MDEQ's written decision, but shall have 30 days from the date of its initial notice to provide MDEQ with a statement identifying the matters and issues for which it is invoking dispute resolution. Dispute resolution will be conducted by a third-party neutral mutually agreeable to MDEQ and Talen Montana, and Talen Montana, MDEQ, and the third-party neutral will set a schedule for dispute resolution. Payment for the costs of the third-party neutral would be the responsibility of Talen Montana. More detailed specifics regarding the type and selection of a third-party neutral will be set forth in the settlement agreement.
- e. Subject to further discussions as to the appropriate jurisdiction and venue for appeal as well as alternative dispute options, MDEQ's written decision, once final, shall be subject to the same appeal rights under the AOC and applicable state and federal law as any other decision made by MDEQ under the AOC.

Condition 3:

In evaluating whether to grant the Request to Amend submitted by Talen Montana pursuant to Condition 2, MDEQ's assessment comparing Alternative 10 (including any updated information related to Alternative 10) and the alternative identified in Condition 1.a shall include consideration of the same criteria MDEQ has used to make other remedy decisions under the AOC, which include the following primary factors and evidence:

- a. The comparative effectiveness and reliability of the alternatives on meeting the groundwater cleanup criteria under the AOC in the short and long term, including the ability of the alternatives to permanently achieve the groundwater cleanup criteria. If neither alternative is projected to achieve all groundwater cleanup criteria at the point of compliance at the end of the modeling period (at the year 2150), effectiveness and permanence shall be based on projected plume extent and stability after capture system shutdown.
- b. Compliance of the alternatives with the AOC, the Montana Water Quality Act, the Montana Major Facility Siting Act, other state law, and the federal Coal Combustion Residuals Rule.
- c. As part of the evaluation of compliance with the Montana Water Quality Act, the extent to which each alternative is expected to achieve permanent separation of ash and groundwater table.

MDEQ shall also consider the following other factors:

- d. The technical practicability and implementability of the alternatives.

- e. If both alternatives are sufficiently protective, the cost-effectiveness of the alternatives.
- f. Proposed institutional controls, consistent with Sections I.M, IV.C, VI.C.2, and VI.E of the AOC.

To evaluate permanence under factors (a) and (c) (and in any additional factors that MDEQ considers as discussed in the final paragraph of this section), the following must be submitted by Talen Montana and will be considered by MDEQ:

- Modeling data and analysis related to groundwater levels and cleanup performance must be considered as part of the remedy selection decision. If MDEQ disagrees with model conclusions submitted by Talen Montana or its consultant(s), it must identify specific elements of disagreement and basis for disagreement in its detailed statement described in Condition 2.b.i, and provide Talen Montana with an opportunity to respond or, if appropriate, make adjustments to the groundwater modeling. Talen Montana shall provide all model files to MDEQ within a reasonable timeframe if requested by MDEQ.
- Existing groundwater data and any additional groundwater data developed during the two-year period prior to the submission of the Request to Amend.
- Safety factor, slope stability, and short and long-term geotechnical stability analysis of all earthmoving activities or earthen structures (including predictive analysis of settlement and any further ash characterization analysis).
- Dam breach analysis for any structure that will hold back very low or no-strength soils or impounded water, with further details regarding the scope and methodology for this analysis to be worked out as part of the consultation process described in Condition 2.a.
- Flood studies of the permanent land formed area, including stormwater and surface water controls, with further details regarding the scope and methodology for this analysis to be worked out as part of the consultation process described in Condition 2.a.
- An evaluation of the ability to monitor the effectiveness of the remedies.
- An evaluation of the ease of implementing additional remedial actions if necessary and appropriate.

MDEQ shall identify to Talen Montana as part of further settlement discussions any additional information or technical criteria that MDEQ will use to evaluate the Request to Amend; provided, however, MDEQ reserves the right to consider other factors and evidence not listed here that are not apparent at the time the settlement agreement is entered. These factors and evidence shall be limited to those related to the efficacy, safety, efficiency, and cost of the remedial alternatives or other factors and evidence relevant to the decision criteria set forth in Condition 3. MDEQ agrees to provide Talen notice and the opportunity to address such additional factors and evidence as part of its Request to Amend or Revised Request to Amend.

Condition 4: Notwithstanding Conditions 1&2 above, Talen Montana shall have the ability to propose revisions to MDEQ to Alternative 10 and/or the alternative identified in Condition 1.a to account for (1) changes to federal or state laws or regulations, (2) permitting or other impediments to implementing either alternative (3) new technology developments in the disposal of ash, and/or (4) new technology developments or opportunities for the beneficial use of ash in the SOEP/STEP.

Condition 5: Talen Montana would agree to pay for MDEQ's consideration of the Request to Amend and any additional proposals submitted under Condition 4.

Condition 6: The total financial assurance for Alternative 10 shall be posted in the amount of \$163,324,678.99 within 60 days after execution of the settlement agreement. This amount is the total financial assurance required for Alternative 10 and does not account for the \$43,213,270.00 in financial assurance previously submitted for the SOEP/STEP area. The amount of financial assurance requested within 60 days therefore will be \$120,111,408.99.

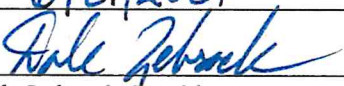
The parties acknowledge that the required financial assurance amount is subject to annual review pursuant to Article VIII of the AOC. In the event that MDEQ disagrees with an estimate provided by Talen Montana pursuant to Article VIII, MDEQ shall identify specific elements of disagreement and basis for disagreement and shall provide Talen Montana with an opportunity to respond before MDEQ requests an updated financial assurance amount.

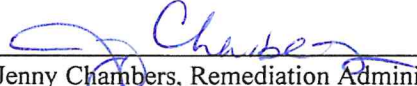
Condition 7: Nothing shall preclude Talen Montana from ceasing evaluation of the alternative identified in Condition 1.a prior to the expiration of the two-year evaluation period if, pursuant to Talen Montana's own analysis or comments from MDEQ, Talen Montana no longer seeks to request to amend MDEQ's remedy selection of Alternative 10. Although Talen Montana may choose to cease evaluation of the Alternative identified in Condition 1.a, MDEQ shall not unilaterally direct Talen Montana to do so. Nothing herein shall prevent MDEQ from complying with any court order or other legal requirement.

Condition 8: If the parties reach agreement on this term sheet, the term sheet shall be signed in writing by the authorized representative of each party. Agreement on and signature of the term sheet does not end dispute resolution, but rather moves dispute resolution into Phase 3 so that the parties can draft a detailed settlement agreement. In this event, Phase 3 of dispute resolution is not complete until the settlement agreement is signed by the MDEQ Director and an authorized representative of Talen Montana. Accordingly, Case No. BER 2020-07 MFSA/WQA remains stayed until Phase 3 of dispute resolution is complete and the settlement agreement is signed. If settlement agreement is not reached during Phase 3, then the dispute will be elevated to the MDEQ Director and dispute resolution will be completed when the Director issues a final decision.

Terms for further discussion contingent upon reaching agreement on the terms above:

1. Discussion of enforceable deadlines and penalties.
2. Mechanics and timeframes of "informal consultations" between MDEQ and Talen Montana during two-year evaluation period.
3. Appropriate jurisdiction and venue for any appeal related to DEQ decision on Request to Amend if dispute remains following completion of dispute resolution.

Date: 6/21/2021

Dale Lebsack, President
Talen Montana, LLC

Date: 6/22/2021

Jenny Chambers, Remediation Administrator
Department of Environmental Quality