UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

H.A. Wagner, LLC	**)**	**Docket No. ER26-2739**
Brandon Shores, LLC	**)**	**Docket No. ER26-2740**
	)	**(unconsolidated)**

PROTEST OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL

The Maryland Office of People's Counsel ("MPC"), pursuant to Federal Energy Regulatory Commission ("Commission" or "FERC") Rules of Practice and Procedure,_ Section 211,[1] submits its protest, in both of the above captioned proceedings, to the filings, separately by H.A. Wagner, LLC and Brandon Shores, LLC, both affiliates of Talen Energy (and referred to here individually and collectively as "Talen"), initiating the instant proceedings.

In its filings, Talen seeks, through separate "Agreement[s] to Amend"[2] the Continuing Operations Rate Schedules ("CORSs") for each of Wagner and Brandon Shores power plants (the "Talen RMR Units"), to extend the period of operation of the Talen RMR Units for an additional two years beyond the term of the currently effective CORSs, ending following the proposed extensions, on May 31, 2031.[3] The Agreements to Amend the CORSs for the Talen RMR Units, expressly amend the settlement agreement among Talen and the settling parties (the "Talen RMR Settlement Agreement") considered in the ER24-1787 and ER24-1790 proceedings.

[1] 18 CFR Section 385.211.
[2] See, Agreement to Amend Brandon Shores LLC Continuing Operations Rate Schedule (June 4, 2026) and Agreement to Amend H.A. Wagner LLC Continuing Operations Rate Schedule (June 4, 2026).
[3] MPC previously filed a doc-less motion to intervene in this proceeding, dated June 9, 2026.

SUMMARY OF PROTEST

Talen fails to show that the rates during the additional two years of extended operation of the Talen RMR Units, as embodied in the proposed annual fixed revenue requirement ("AFRR"), are just and reasonable. As proposed by Talen, that AFRR is a continuation, with upward adjustments, of the already excessive AFRR determined under the settlement applicable to the original four-year term for operation of the Talen RMR Units. In the fundamentally changed circumstances of the additional two years of the requested extended term, the level of that charge is not just and reasonable. Moreover, the Talen filings cover new subject matter, embedded in new agreements, distinct from the existing Talen RMR Settlement Agreement covering the initial term, and, therefore, the AFRR proposed for the extended term is subject independently to review under section 205, and that review is not foreclosed by the initial term AFRR established by the Talen RMR Settlement Agreement.

To the extent arguments raised here are nevertheless deemed foreclosed by the settlement adopting the AFRR for the initial four year term of the RMR arrangement previously approved by the Commission, and objected to by MPC in its appeal of the Commission order approving the settlement, MPC's protest here is necessary to preserve its rights to challenge further the AFRR proposed by Talen for the additional two-year term of the RMR arrangement in the event its appeal of the Commission's approval of the settlement is successful. The extended term AFRR sought by Talen is infirm for the same reasons asserted by MPC in its request for rehearing and appeal of the Commission order approving the Talen Settlement.

For the reasons further discussed below, rolling over that initial term AFRR into the extended term exceeds to an even greater extent the Talen RMR Units' properly determined cost of service, because the context for the settlement AFRR presumed full recovery in the CORSs' charges of the net plant balances of the Talen RMR Units during the initial term. Maintaining the AFRR applicable to the initial term of the RMR arrangement at the same level for the additional two-year term is even further divorced from a just and reasonable level of compensation because it does not incorporate, as it should, a reduction to reflect full depreciation of the net plant balances for the Talen RMR Units, commencing at the start of the additional two-year extension period.

BACKGROUND

The arrangements for continued operation of the Talen RMR Units which Talen now seeks to amend were filed under Part V, sections 113-120 of PJM Interconnection, LLC's ("PJM's") open access transmission tariff ("OATT") governing power plant deactivations and so-called Reliability Must-Run (or "RMR") arrangements for continued operation of the power plants, otherwise seeking deactivation, but determined to be necessary by PJM to avoid grid reliability violations.

In its filings, Talen seeks extensions for an additional two years beyond the original four-year term of the existing CORSs applicable to each of the two Talen RMR Units. Pursuant to the OATT, Talen filed for approval of the original CORSs by the Commission in dockets ER24-1787 (for the H.A. Wagner power plant) and ER24-1790 (for the Brandon Shores power plant), each, as of the filing, with a three-year seven-month term running from June 1, 2025 to December 31, 2028, but with a term, as reflected in the contested settlement of the Talen filings of four years, running to May 31, 2029. The term of the original CORSs proposed by Talen (and as incorporated into the Commission approved settlement) aligned with the period PJM had then estimated for completion of new transmission facilities deemed necessary by PJM to allow for retirement of the Talen RMR Units without violation of grid reliability requirements.

In its filings with the Commission considered in dockets ER24-1787 and ER24-1790, Talen elected to accept continued operations of the Talen RMR Units under RMR arrangements, beyond their then proposed deactivation dates for the Talen Units of May 31, 2025, and opted to secure FERC approval of the cost of service for operation of the Talen RMR Units under Part V, section 119 of the OATT,[4] rather than the alternative Deactivation Avoidable Cost Rate (or "DACR") available for cost recovery provided for under the OATT, Part V, section 115. After extensive proceedings considering the Talen filings before a settlement judge, the Commission approved a contested settlement of the CORSs, including an AFRR, separately stated for each of the Brandon Shores and Wagner power plants (the "Talen RMR Settlement").[5] The approved AFRRs very

[4] Section 119 provides, in relevant part, as follows:

> Notwithstanding anything to the contrary in Part V of this Tariff, a Generation Owner with a generating unit proposed for Deactivation that continues operating beyond its proposed Deactivation Date may file with the Commission a cost of service rate to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated pursuant to this Part V ("Cost of Service Recovery Rate"). In the event that the Generation Owner or its Designated Agent files a rate pursuant to this section 119, the Generation Owner shall not be eligible to receive Deactivation Avoidable Cost Credits, except as provided pursuant to this section 119, and PJM Settlement shall pay the Generation Owner the Cost of Service Recovery Rate accepted by the Commission commencing on the effective date established by the Commission for the rate.

[5] *H.A. Wagner LLC, et al.*, 191 FERC ¶ 61,098, *order denying reh'g*, 192 FERC ¶ 61,189 (2025).

significantly exceed the AFRRs supported by written expert testimony filed by FERC trial staff and included in the record of the proceedings, and were explicitly premised on the four year original term of the CORSs, ending on May 31, 2029 (adjusted from the original term end date of December 31, 2028 by virtue of the settlement discussions and affirmed in the Talen RMR Settlement).[6] MPC and Market Monitoring Analytics, LLC, the Independent Market Monitor for PJM ("IMM") timely filed requests for rehearing of the FERC decision objecting to the Talen RMR Settlement, and have since filed judicial appeals of the decision, which appeals remain pending. The major issue raised on appeal is the grossly excessive AFRR (when compared to the record evidence in the proceeding) incorporated into the Talen RMR Settlement and approved by the Commission. It is MPC's understanding that Talen has operated since June 1, 2025, and continues to operate the Talen RMR Units under the terms of the CORSs effected through the Talen RMR Settlement.

PJM has now determined that the Talen RMR Units must operate for an additional two years beyond the original term of the RMR arrangements ending on May 31, 2029.[7] According to PJM, completion of extensive additional transmission facilities are necessary, with in-service dates estimated to occur following the end of the original term

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[6] *See generally*, Affidavit of Trial Staff Witness Michael Healy filed in Dockets ER24-1787 and ER24-1790 (Feb. 26, 2025), p. 8, P9. FERC Trial Staff, with extensive evidence provided by expert affidavit testimony, determined that the AFRRs for the Talen RMR Units, conforming to the evidence in the proceeding and consistent with Commission precedent, was $97 million. *Id.* The AFRR adopted by the Talen RMR Settlement was $180 million (a difference of $83 million).

[7] *See generally*, PJM's filing in docket ER26-2738, dated June 4, 2026.

of the Talen RMR Units' RMR arrangements, in order to enable the retirement of the Talen RMR Units without causing grid reliability violations. Talen's request for extension of the term of the Talen RMR Units' RMR arrangements, by amending the Talen RMR Settlement, for an additional two years, running to May 31, 2031, ostensibly aligns with PJM's new determination regarding the need for continued operation of the Talen RMR Units. Talen proposes in its filing the roll-over of the excessive AFRR incorporated in the Talen RMR Settlement, premised on the original four-year term of the Talen RMR arrangements, into the requested additional two-year extension of the RMR arrangement.

PROTEST

By making its filings in these dockets with the Commission under section 205 of the Federal Power Act ("FPA"), Talen must show that the resulting rates are just and reasonable; moreover, it bears the burden of proof in making that showing.[8] In its filings, Talen fails to make this required showing or sustain its burden of proof. The AFRR is a continuation, with upward adjustments, of the already excessive AFRR determined under the Talen RMR Settlement. In the fundamentally changed circumstances of the additional two years of the requested extended term, the level of that charge is not just and reasonable, even though part of an extension of an existing rate previously accepted by FERC.

MPC also notes that the crediting against the costs of the Talen RMR Arrangement of PJM capacity market revenues, as approved by the Commission and the subject of

[8] 16 U.S.C. section 824d (e).

PJM's filing in ER26-2738, helps to mitigate the burden of the customer costs of the RMR arrangement when compared to the circumstances without such crediting. The customers who are paying for the Talen RMR costs also pay the revenues derived from the capacity market used to fund the credit. The crediting mechanism is independently required by the FPA's "just and reasonable" standard. Without it, the customers paying for the Talen RMR arrangement would unfairly pay twice for the accredited capacity supplied by the Talen RMR Units, both through the capacity market and through the RMR arrangement.[9]

The cumulative rate recovery (before accounting for the offset of market revenues and Project Investments ("PIs") of the Talen RMR Units over the full six-year term, including the additional two years of the requested extension of the RMR arrangements is substantial—$1.08 billion. Based on the record evidence developed and submitted by FERC Trial Staff in the prior proceedings resulting in the Talen RMR Settlement, the cumulative customer charges paid to Talen for operation of the Talen RMR Units, at the level defined by the Talen RMR Settlement AFRR over this six year period, is nearly $500 million in excess of the properly determined cost of service of operation of the Talen RMR Units over that same period.[10] The FPA mandates that the costs of the Talen RMR Units' arrangements be just and reasonable. The AFRR sought by Talen during the requested extended two years of operation do not conform to this requirement.

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[9] *Id.*

[10] *See*, Healy Testimony, cited, *supra.* (6 x $83 million = $498 million)

I. Talen properly bears the burden of proof to show that the rates it proposes for the requested extended term are just and reasonable.

Talen, in making its filings with the Commission under FPA, section 205[11], bears the burden of proof to demonstrate that the proposed rate for the extended CORSs is just and reasonable. Talen may argue that, because the filings comprise the continuation of currently effective rate schedules, the statutory allocation of the burden of proof mandated by section 205 does not apply to its filings. While the Talen filings are an "extension" of the CORSs they also entail modifications, which make Talen's anticipated argument incorrect. Talen is anticipated to assert, citing to the Talen RMR Settlement Agreement, essentially, that the extended term requested for the Talen Units' CORSs activates a provision already embedded in the previously filed CORSs and, therefore, does not comprise a rate increase. That is incorrect. The filings [12] the present proceedings arise expressly from "amendments" to the existing CORSs;[13] they are not self-activating. Without the extended term, the CORSs would expire, reducing the resulting rate to zero. The extended term of the CORSs with its prospectively applied AFRR, if approved, would constitute an increase over that default rate. Moreover, Talen seeks the extended term by changing the existing CORSs, including the recovery of additional project investments and increases in the AFRRs due to indexing, which would

[11] FPA, section 205(e). 16 USC Section 824d (e).

[13] *See* Agreement to Amend Brandon Shores LLC Continuing Operations Rate Schedule (June 4, 2026); Agreement to Amend H. A. Wagner LLC Continuing Operations Rate Schedule (June 4, 2026).

increase the rates to be charged over the proposed extended term. Accordingly, as the proponent of an increase in an initial or modified rate filed with the Commission pursuant to FPA, Section 205, Talen bears the burden of proof to support its filing. Talen fails to carry this burden with respect to the AFRR requested for the two-year extension.

II. Talen's AFRR applicable to the period of the extended term is excessive and not just and reasonable.

Talen's AFRR, proposed for the period of requested extended operation, rolls over the same AFRR determined in the Talen RMR Settlement Agreement, with several adjustments noted further below. This rollover is fundamentally inconsistent with the context and basis for the AFRR embedded in the Talen RMR Settlement Agreement. As the Commission acknowledged in approving the settlement, it represented a compromise between the AFRR sought by Talen its initial filings ($215.8 million) and the AFRR comprising a just and reasonable rate supported by FERC trial staff in its briefing to the Commission accompanied by expert affidavits ($97.3 million).[14] As decided by the Commission, the ultimate AFRR for the Talen RMR Units incorporated into the Talen RMR Settlement ($180 million), while significantly exceeding the actual cost of service supported by FERC trial staff, comprised a trade-off against other benefits arising from the settlement. The difference between the AFRR of the Talen Settlement Agreement and that of FERC trial staff (or approximately $100 million) was the amount offset by the

[14] *See generally*, Affidavit of Trial Staff Witness Michael Healy filed in Dockets ER24-1787 and ER24-1790 (Feb. 26, 2025), p. 8, P9.

other settlement benefits identified by the Commission and deemed sufficient to support the Commission's approval of the Talen RMR Settlement. [15] [16]

However, critical to the derivation of the FERC trial staff AFRR was the four-year originally anticipated term of the RMR Arrangements for the Talen RMR Units. As noted by FERC trial staff witness Healy in his affidavit filed in ER24-1787 and ER24-1780, with respect to the Brandon Shores power plant:

> Because the RMR term ends on May 31, 2029, except for land, I fully depreciated the assets as of that date in order for Talen to fully recover the remaining net book value. Talen also agreed that for GAAP purposes, if the CORS goes into effect that the estimated useful life would align with the CORS [May 31, 2029] Attachment A-3 at 10 (S-H-BS-2.3c). The [Talen] filing however, depreciated the assets until May 31, 2038, which resulted in less depreciation during the term and un-recovered net book value at the end of the term. The difference in these depreciation end dates partially offsets the significantly lower depreciation expense resulting from the lower starting net book value.[17]
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> And, again, with respect to the Wagner power plant:
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> Trial Staff's recommended depreciation expense is higher than Talen's as-filed by [Begin CUI//PRIV] [End CUI//PRIV] because, except for land, Trial Staff fully depreciated Wagner assets by the end of the RMR term in order for Talen to fully recover the remaining net book value. Talen agreed that for GAAP purposes, if the CORS goes into effect, that the estimated useful life would align to the term of the CORS [May 31, 2029]. See Attachment A-3 at 10 (S-H-BS-2.3c) The filing however, depreciated the assets past the May, 31, 2029 date based on longer DOE Financial Management Handbook lives. This resulted in less depreciation expense during the RMR term with un-recovered net book value remaining at the end of

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[16] MPC does not waive its objections to the level of the AFRR incorporated into the Talen RMR Settlement, namely that it is nearly double a properly determined cost of service and, therefore, is not just and reasonable and thereby violates the FPA. MPC continues to maintain these objections through its appeal of the FERC orders approving the settlement.

[17] *Id*., pp. 18-19 P 49.

the term.[18]

Accordingly, at the end of the original four year term, under the FERC trial staff's AFRR, anchoring the Talen RMR Settlement AFRR, the full rate base (the basis for both return on and off the capital investment and associated income taxes) will be fully depreciated, leaving the just and reasonable rate for subsequent periods (those during the additional two years of the requested additional two year term) much reduced to a level allowing for continued recovery of the fixed operation and maintenance expenses of the Talen RM units.[19] The AFRR amount requested by Talen includes depreciation expense for rate base and a return on rate base. If the current AFRR level allows for the full depreciation of the plants' rate base over four years (and staff's calculation of AFRR allows that rate of depreciation and is still significantly lower than the settlement amount), then there is no rate base to depreciate or earn a return on after four years and basing rates on depreciation of and return on a non-existent rate base is not just and reasonable. As noted previously, under the Commission's rationale for approving the original settlement, FERC trial staff's AFRR brackets the low end of a just and reasonable rate under the Talen RMR Settlement relative to benefits the Commission found necessary to offset that excess cost. In the fundamentally changed circumstances during the extended term requested by Talen, the FERC trial staff's AFRR necessarily is much reduced. Reflecting FERC trial staff's AFRR's function as an anchor to the Talen RMR Settlement AFRR, the

[18] *Id.*, p. 26, P 73.

[19] FERC Trial Staff Witness Raymond He filed testimony asserting that the annual fixed operation and maintenance expenses for the Talen RMR Units were $67 million. Affidavit of Trial Staff Witness Raymond He (Feb. 26, 2025), Docket Nos. ER24-1787 and ER24-1790, p. 7, P 17.

Talen RMR Settlement AFRR should be similarly reduced for the period of the requested extended term. Absent such a reduction, the Talen Settlement AFRR cannot be just and reasonable; it is untethered from the quantum of benefits previously considered by the Commission as a necessary offset to the excess cost of service and not supported in the record.

The additional two years of operation Talen requests fundamentally depart from the context for the initial approval of the AFRR effected under the Talen RMR Settlement, even assuming its validity that MPC is separately contesting on appeal. This necessitates downward adjustment to the AFRR Talen now requests. PJM OATT provisions governing RMR designation and procedures, the Commission's FPA mandate to ensure just and reasonable rates, and Commission policy disfavoring RMRs all underpin the extraordinary circumstances supporting this result. As noted above, the record evidence adduced in ER24-1787 *et al.*, by FERC trial staff bracketing the AFRR incorporated into the Talen RMR Settlement, was directly tied to the four-year term of the RMR arrangement under consideration in the proceedings. The AFRR two-year extension is completely untethered from any record evidentiary support. At a minimum, Talen should be required to support and document its revenue-requirement request for the two year extension period.

Approving Talen's AFRR request, without further justification, is at variance with the PJM OATT provision providing authority for Talen's RMR operations, namely that it can file for a "cost of service rate to recover the entire cost of operating the generating unit," OATT, Part V, sec. 119. In the new context of the two-year extension, the AFRR, is grossly excessive to its "cost of service" and not tethered to any the benefits purporting to offset its excess during the initial four-year term, as contemplated at the time of entry into the Talen RMR Settlement. It is necessarily also not just and reasonable, as it must be pursuant to the FPA.

Moreover, this excess payment, if approved by the Commission, severely damages the overall incentive structure facing generators considering operation under a RMR, by inflating the level of compensation above its just and reasonable level for operation under a RMR and, as is afforded to RMR resources, under exemption from the performance obligations of capacity resources operating in PJM's administered markets, versus the preferred policy result of the generator's continued operation as a market resource in the PJM administered markets. *See, e.g., Greenleaf Energy Unit 2, LLC*, 172 FERC ¶ 61,111 (2020) (Commissioner Danly, concurring) ("RMR agreements are a product of market failure, and they themselves cause markets to fail. This further failure arises as RMR agreements obscure the market signals that would create incentives for the very development that the markets are intended to deliver. I therefore agree with Commission precedent that RMR agreements should be a measure of last resort"). This damage to the markets is particularly acute for generators in the circumstances of the Talen RMR Units, which satisfy an on-going need for reliable operation of the grid (as demonstrated by PJM's repeated designation of the Talen RMR Units for RMR operation) and, therefore, have a high probability of receiving a RMR designation upon submitting a notice of deactivation and thereby possess market power arising from their strategic relation to operation of the grid.

III. Talen's request for recovery of project investments during the extended term is deficient.

In its filings in this proceeding, Talen has added a very extensive series of project investments ("PIs") for each of the Talen RMR Units proposed for cost recovery during the requested extended term.[20] Under the proposed revised Talen RMR Settlement Arrangement, as proposed for amendment by the Amended Agreements, Talen is entitled to recover the costs of these expenditures, categorized as Identified PIs because they are separately and specifically described, under the terms of the original CORSs. The "updated" PIs are described, but no cost estimate or cost information of any kind is provided. Moreover, as listed Identified PIs, the CORSs eliminate or limit any third-party review of the individually described PIs, operating essentially as a blank check. Talen should be required to document the justification for these PIs and the basis for their costs.

IV. The requested remedies are consistent with continued operation of the Talen RMR Units.

This protest asks the Commission to accept the Talen filings, subject to suspension for the period allowed by statute[21] and set the matter for hearing to review the level and basis for the requested AFRR. These remedies are consistent with assuring continued operation of the Talen RMR Units during the 2029/2030 and 2030/2031 delivery years, as determined by PJM, in order to maintain grid reliability and with maintaining the

[20] *See,* Agreement to Amend Brandon Shores LLC Continuing Operations Rate Schedule, section 1.3, Updated Identified Project Investments (June 4, 2026); Agreement to Amend H.A. Wagner LLC Continuing Operations Rate Schedule, section 1.3 (same) (June 4, 2026).

[21] The maximum suspension period is for five months; the proposed two-year extension begins June 1, 2029, long past the end date of any possible suspension period for the Talen filings. FPA, section 205(e)

continued eligibility of the Talen RMR Units for inclusion of the units in PJM's capacity auction for those delivery years.

First, with respect to continued operation of the Talen RMR Units for the additional delivery years, Talen itself filed for the extended operation of the Talen RMR Units pursuant to the OATT. Talen is assured of receiving reasonable compensation for that continued operation under the PJM OATT and, more broadly, the FPA's mandate to set just and reasonable rates for operation of the units. In addition, in the highly disfavored event where Talen decides not to proceed with continued operation of the Talen RMR Units during the extended term because of a lawful Commission modification of its filings to conform them to the just and reasonable requirement of the FPA, the Department of Energy's ("DOE's") back-stop authority under FPA, section 202c can be invoked to require the Talen RMR Units' continued operation.[22]

Second, eligibility of the Talen RMR Units for inclusion in the BRAs for the two future delivery years, and the associated capacity market revenue crediting, can still be satisfied with FERC acceptance of PJM's separately filed proposed modification to the OATT filed in ER26-2738. Acceptance of that filing will allow for continued eligibility

[22] 16 U.S.C. section 824a(c). Continued operation of the Talen RMR Units, in accordance with PJM's reliability determinations, is further anchored by multiple executive orders seeking "utiliz[ation of] all available power generation resources" Exec. Order No. 14,262, Strengthening the Reliability & Security of the United States Elec. Grid, 90 Fed. Reg. 15,521, at 15,521 (Apr. 14, 2025) ("EO 14262"); see also Exec. Order 14,156, Declaring a National Energy Emergency, 90 Fed. Reg. 8,433 (Jan. 29, 2025) ("EO 14156"); see also Exec. Order 14,261, Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241, 90 Fed. Reg. 15,517 (Apr. 8, 2025).See, PJM Initial Filing in ER26-2378, p 11 (June 4, 2026).

for such treatment for the BRAs for delivery years 2029/2030 and 2030/3031 so long as it is pursuant to "an extension of a rate schedule that has previously been accepted by the [Commission]." Any FERC determinations regarding the level of compensation paid to Talen for continued operation of the Talen RMR Units to remove the excess recovery resulting from the roll-over of the initial AFRR, while modifying the CORSs applicable to the Talen RMR Units, will not alter the status of the CORSs as a rate schedule dating back to the Talen filings commencing RMR service from the Talen RMR Units. The status will not be altered because the CORSs for the extended term will remain an "extension of a rate schedule, previously accepted by the Commission" matching the proposed change in the OATT requested by PJM to expand eligibility for generators, subject to an RMR arrangement. Talen, itself, seeks modifications to the existing CORSs (e.g., the change in PIs). Just as a FERC re-determination of the AFRR, the changes to the CORSs sought by Talen will also be pursuant to the extension of rate schedule previously accepted by the Commission. Accordingly, FERC deliberation on and scrutiny of the AFRR, and its resulting possible modification by the Commission, will not limit the Talen RMR Units' inclusion in the BRAs and application of the associated crediting mechanism in the BRAs for the delivery years during the extended term.

CONCLUSION

The Commission should determine the just and reasonable rate of compensation due to Talen during the requested extended term of the Talen RMR Units consistent with the positions raised in MPC's protest.

Respectfully submitted,

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Certificate of Service.

Pursuant to Rules 206 and Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 and 18 C.F.R. § 2010, it is hereby certified that a copy of the foregoing has been served upon the Parties and Intervenors in this Proceeding.

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/s/ Philip L. Sussler
Dated: June 25, 2026