

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, LLC	Docket Nos. ER23-2612-000, ER23-2612-001
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**PROTEST OF THE
MARYLAND OFFICE OF PEOPLE’S COUNSEL**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 CFR §385.202, the Maryland Office of People’s Counsel (“OPC”) respectfully submits the following comments and protest with respect to the filing by PJM Interconnection, LLC (“PJM”) with the Commission dated August 11, 2023, initiating this proceeding (as modified by an errata filing by PJM with the Commission dated August 25, 2023) (collectively, the “PJM Filing”).¹ OPC previously filed a doc-less motion to intervene in this proceeding.

The PJM Filing proposes the incorporation into the PJM Open Access Transmission Tariff (“PJM OATT”) of a series of transmission projects currently estimated to comprise three-quarters of a billion dollars in capital expenditures. PJM approved this Grid Solutions Package to address grid reliability issues arising from the proposed deactivation of the Brandon Shores power plant in 2025, whose likely continued operation until completion of the Grid Solutions Package at the end of 2028

¹ The Commission issued an initial notice, dated August 15, 2023, with respect to the PJM Filing on Aug. 11, 2023, which was superseded by an Errata Notice Extending Comment Period, dated August 16, 2023, extending the comment deadline to September 13, 2023.

could add additional hundreds of millions in power costs. Maryland ratepayers will be primarily responsible for the payment of these costs.

Although styled as an “update” purportedly administrative in nature to the PJM PJM OATT, the PJM Filing reflects and has very important implications for (i) PJM’s conduct of transmission planning, (ii) PJM’s failure to consider holistically generator retirements in its planning, (iii) the adverse and inconsistent operation of PJM’s rules in the context of generator retirements, and (iv) the imposition of major cost and grid reliability impacts on Maryland electric ratepayers. PJM’s process for the approval of the Grid Solutions Package is flawed and lacking in the transparency that should apply to regulated electric utility investments of the very large magnitudes involved.²

Specifically, PJM seeks to amend the PJM OATT, Schedule 12 – Appendices A and C to revise the cost allocation responsibility for 25 baseline transmission projects included in an update of the PJM RTEP approved by the PJM Board of Managers (the “PJM Board”) on July 12, 2023. Among these transmission projects are several related to the “solution” of violations of reliability requirements for the operation of the electric transmission grid resulting from the proposed deactivation of the 1272-Megawatt (“MW”) capacity Brandon Shores power plant located near Baltimore, Maryland (the

² At this time, OPC does not contest the cost allocation of the Grid Solutions Package, assuming the projects, comprising the package, are ultimately designated and approved as baseline projects for purposes of the PJM Regional Transmission Expansion Plan (“RTEP”). OPC is also mindful of the importance of assuring grid reliability and PJM’s vital responsibilities in accomplishing this.

“Grid Solutions Package”). The owner of Brandon Shores, Talen³, gave notice, dated April 6, 2023, to PJM of its intended deactivation of the plant on June 1, 2025.

The PJM Board’s approval assigned the responsibility for the construction of these projects to incumbent transmission owner (“TO”) affiliates of Exelon, Corp., primarily Baltimore Gas and Electric Company (“BGE”). The estimated commercial operation date of the proposed transmission projects is December 31, 2028 (more than five years following the deactivation notice for the plant and more than three years following Talen’s proposed date for shutdown of the plant). At the present time, PJM has asked Talen to continue operation of the plant between June 31, 2025 (the date for deactivation contained in the deactivation notice) and the end of 2028 (the date estimated for completion of the Grid Solutions Package) under a reliability must-run (“RMR”) arrangement, but Talen, reportedly, has not agreed to do so. Moreover, the cost to ratepayers of such an RMR arrangement, if it is agreed by Talen, is currently unknown or not publicly disclosed. The Grid Solutions Package, because of its later completion date, will not resolve the grid violations resulting from a shut-down of the plant between June 2025 and December 2028 (the “Gap Period”).

The estimated capital expenditure required for the completion of the transmission projects comprising the Grid Solutions Package alone, as reported by PJM, is \$785

³ The ownership of the plant is reportedly through Brandon Shores, LLC, but ultimate ownership is through the parent or affiliated companies, Talen Energy Supply, LLC, Talen Generation, LLC, Talen Energy Marketing, LLC or Talen Energy Corporation, as modified by the 2022 chapter 11 plan approved by the bankruptcy court for the group of TEC affiliates. The text employs the generic “Talen” to describe the plant owner during recent periods.

million. The majority of this capital expenditure arises from transmission projects assigned to BGE and would comprise an approximately 35% increase in BGE's 2021 FERC-regulated transmission rate base. Over 68% of the investment (or \$534 million) is assigned to electric load in the BGE locational deliverability area ("LDA") which is entirely in Maryland. Those customers will be responsible for the revenue requirements associated with this capital investment (in addition to the cost of the still pending possible RMR arrangement). These are major commitments by Maryland public service companies, ultimately to be paid for predominantly by Maryland ratepayers. The level, rigor and transparency of the approval process for these commitments conducted to date are seriously deficient.

The PJM Filing, if approved without modification by the Commission, will result in unjust and unreasonable rates and practices for the provision of wholesale electric power and transmission service in violation of sections 205 and 206 of the Federal Power Act. Accordingly, OPC requests that the Commission reject the PJM Filing, subject to refiling in conformity with the modifications requested herein, including a commitment by PJM to conduct a transparent and thorough review of alternatives as well engaging in a process for competitive procurement, where feasible, for some or all of the segments of the projects comprising the Grid Solutions Package. OPC also requests that the Commission open a proceeding on its own initiative, pursuant to section 206 of the Federal Power Act, to investigate the matters discussed herein, and to decide on and adopt the appropriate remedies.

BACKGROUND.

A. Introduction.

The pending, proposed retirement of Brandon Shores in 2025, follows from a long history foreshadowing the event, as well as the legacy limitations of the transmission grid to which the plant interconnects, coupled with their interaction with the operation of PJM's planning and market administration rules. This history of physical operation of the plant and grid and their intricate institutional environment provides critical context for understanding the Grid Solutions Package, PJM's actions in approving it, and the flaws in the PJM planning rules and processes.

B. The Brandon Shores power plant.

The plant consists of two steam turbines, each approximately 635 MW in capacity, fueled by coal.⁴ It was constructed by BGE in two phases, unit 1 completed in 1984, unit 2 completed in 1991.⁵ Following restructuring of the Maryland electric sector, the plant was divested by BGE and operated thereafter under FERC granted market-based rate authority in the wholesale power markets administered by PJM. Each unit of the plant has

⁴ PJM reports Brandon Shores 2 as having a capacity of 642.7 MW and Brandon Shores having a capacity of 638.9 MW. *See* pjm.com/planning/service-requests/gen-deactivations (accessed Sep. 13, 2023).

⁵ *Id.* PJM reports the age of Unit 1 as 39 years, that of Unit 2 as 32 years. Reflecting the different policy goals of the period when the plants were constructed, the units, originally proposed to operate on residual fuel oil, were reconfigured prior to initial operation to be fired with coal. This was responsive to orders issued by the Department of Energy ("DOE") pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended by the Omnibus Budget Reconciliation Act of 1981, limiting the further use of petroleum by base-loaded power plants in major respect. *See*, DOE, *Draft Environmental Impact Statement, Conversion to Coal, Baltimore Gas & Electric Company, Brandon Shores Generating Station Units 1 and 2, Anne Arundel County, Maryland* (Dec. 1983).

been in operation for more than 30 years. The annual capacity factor of each unit of the plant has declined over time particularly recently, comprising 0.05% for unit 1 and 36% for unit 2 in 2022.⁶

C. The significance of Brandon Shores for the PJM capacity market and the BGE LDA.⁷

In specified local areas (LDAs) within PJM’s operating footprint where the balance of in-area load, in-area generation and transmission transfer capacity is relatively tight (or constrained), PJM, in the administration of its capacity market (the “Reliability Pricing Model” or “RPM”) establishes a requirement for reliability assurance (“RA”) applicable to each such constrained LDA. The BGE retail service territory is such a constrained LDA and comprises the BGE LDA. PJM conducts its annual capacity market auction (the “Base Residual Auctions” or “BRAs”), with a separate clearing price and settlement of capacity supply and demand for constrained LDAs. The auction is run and settled to procure sufficient generation capacity within the LDA plus the capacity of the grid to import power into the LDA, as measured by the capacity emergency transfer limit (or “CETL”), to meet the estimated peak load of the LDA, augmented by sufficient

⁶ U.S. Energy Information Administration (2022).

⁷ PJM’s analysis of grid violations and the impact on grid reliability arising from a generator shutdown reflects different but overlapping criteria from those employed for an analysis of reliability assurance, but can have very important impacts on reliability assurance and the functioning of PJM’s capacity market. Decisions of resource owners responding to developments in the capacity market can, in turn, have important impacts on grid reliability. Serious review of PJM’s actions regarding an expansion of the transmission grid, responsive to grid reliability impacts, must include an analysis of the interacting impacts on the capacity market and on grid reliability.

reserves to satisfy PJM’s RA requirement of 1 day in 25 years loss of load probability within the constrained LDA.

The plant (and the nearby HA Wagner units, also owned by Talen and located in the BGE LDA) play an outsized role in satisfying the RA requirements of the BGE LDA, as established by the PJM RPM. The table below, derived from the RPM bid parameters developed by PJM for the now delayed BRA planned for the 2025/2026 delivery years, shows the critical values for the functioning of the capacity auction for the BGE LDA. In recently completed PJM BRAs, the BGE LDA typically is settled at a higher clearing price than that for the PJM-wide auction, reflecting the tighter balance of supply and demand within the LDA, but also potentially the high degree of concentration of ownership in of generation capacity within the LDA.

BGE LDA Parameters for BRA for delivery year 2025/2026		
LDA Reliability Requirement (LDA RR) – the procurement target (load plus reserves) for the BGE LDA	MW	7607 MW
CETL for the BGE LDA	MW	5885 MW
In-area (BGE LDA) Generation Capacity	MW	2630.9 MW
In-area (BGE LDA) capacity generation owned by Talen (owner of Brandon Shores (1272 MW) and Wagner (840 MW))	MW	2114.9 MW
Talen % of ownership of in-area generation capacity (BGE LDA)	%	80%

While PJM is currently engaged in an effort to redesign the RPM capacity auctions through its Critical Issues Fast Path (“CIFP”) process, fundamental elements of the RPM, such as the operation of the auction for constrained LDAs is likely to remain the same or similar to the current market structure. In that structure, the retirement of Brandon Shores and removal of its capacity from the supply offer into the BGE LDA capacity market

serves to push likely future BRA clearing prices higher, favoring the remaining in-area generation – the Wagner plant -- owned by Talen, the same owner, comprising 40% of the remaining capacity within the LDA. Constellation and Talen together own 96% of the in-area capacity in the BGE LDA, with the Plant removed. In this context, the potential for the exercise of market power in the BRA for the BGE LDA is a serious risk.

Exacerbating the potential for the exercise of market power is the operation of PJM's rules that generator owners seeking deactivation of their generation resource (e.g., the Plant) can retain the capacity interconnection rights ("CIRs") associated with the resource until one year following deactivation. CIRs, in the amount of megawatts of capacity sought to be offered into the capacity market auction by a resource are required of a generator resource owner in order to qualify the resource's capacity as eligible to bid into the RPM auction. By virtue of its legacy operation, the plant retains CIRs in the amount of its capacity (or approximately 1272 MW). In evaluating the grid interconnection arrangements for applications of developers of new generating resource entrants, PJM will model the incremental deliverability requirements for the capacity of these resources as though this headroom is already absorbed and require the new entrant to pay for additional expansion to the transmission grid in order to acquire CIRs equal to the resource's capacity to allow participation by the new resource in the RPM auctions and the securing of capacity market revenues for the capacity qualified by virtue of its CIRs. The PJM interconnection queue for the BGE LDA indicates there are some 1200 MWs of CIRs currently being applied for in the interconnection queue by developers, but

none of them are reported to have signed Interconnection Service Agreements (“ISAs”); upon signing an ISA, the signing developer becomes responsible for the upgrade costs allocated to its project at the time of signing.

It is a reasonable supposition that a major deterrent to new entry in the BGE LDA is cost of very expensive transmission builds incremental to the headroom or CIRs held by Talen for Brandon Shores. It is not apparent that Talen is making diligent efforts to repower the plant or develop alternate capacity which could utilize the plant’s CIRs. Such failure to pursue use of the plant’s CIRs, essentially a hoarding of CIRs, erects a barrier to entry of new capacity, preventing market forces from addressing the potential for the exercise of market power and inducing further scarcity in generation in the BGE LDA due to the plant’s pending retirement.

D. Talen’s commitments regarding operating Brandon Shores on coal.

Also of relevance to Talen’s Brandon Shores deactivation notice, Talen entered into a settlement agreement with Sierra Club, on Nov. 23, 2020, to cease the combustion of coal at the plant by Dec. 31, 2025, conditioned on approval of permits to allow the plant to operate on oil.⁸ The plant cleared in the most recently completed PJM annual base residual capacity auctions (“BRAs”) for the 23/24 and 24/25 delivery years,

⁸ Specifically, the Settlement Agreement provides: “Talen and Brandon Shores agree to cease the combustion of coal at the Brandon Shores Facility by December 31, 2025, conditioned upon approval of all permits required to burn oil, to enable the Brandon Shores Facility to operate as a capacity resource. Talen and Brandon Shores will make good faith efforts to secure such permits.” Settlement Agreement, section B.1.c.

extending its commitment to operate to May 31, 2025, the last day of the 24/25 RPM delivery year. These forward commitments of the plant, allowing for additional time to respond to the plant's proposed deactivation, are a legacy of the three-year forward procurement mechanism of the RPM BRAs, now overridden for the next several years by the delay in the conduct of the annual BRAs recently requested by PJM and approved by the Commission in FERC docket no. ER23-1609.

E. Talen's adverse financial circumstances unrelated to Brandon Shores's status.

Meanwhile, Talen, filed for bankruptcy in May, 2022, for reasons not due to the operations of the plant.⁹ The bankruptcy court confirmed Talen's chapter 11 plan by order dated Dec. 20, 2022.¹⁰ The Commission subsequently approved under section 203 of the

⁹ According to filings by Talen Energy in its bankruptcy proceeding, the bankruptcy resulted from management mis-steps in the context of increases in the price of natural gas during 2021-22 and the resulting "liquidity squeeze" faced by the company, emanating from its power supply portfolio (approximately 13 GW of generation capacity, including the Brandon Shores plant), but, more directly, seriously uneconomic fuel supply, financial and hedging portfolio commitments in the fuel and power markets. *See, e.g., Declaration of Ryan Leland Omohundro in support of Debtors' Chapter 11 Petitions and First Day Relief*, In re: Talen Energy Supply, LLC et al., US Bankruptcy Court, SD Tex. (May 10, 2022), pp. 4-9. Joint Chapter 11 Plan of Talen Energy Supply LLC and its Affiliated Debtors (Oct. 26, 2022). The power plant portfolio of the Talen group of companies, following the emergence from bankruptcy, continues to incur serious economic challenges not directly traceable to the Brandon Shores power plant's operations. *See e.g., Talen Energy Marketing, LLC v. PJM Interconnection*, FERC docket No. EL23-56 (Talen complaint filed at FERC, dated April 5, 2023, seeking reduction or excuse from performance penalties assessed by PJM due to Winter Storm Elliott (occurring between Dec. 23 and 25, 2022) for the operation of the Martins Creek 3 and 4 units, Wagner 1 and 4 units and Montour 2 unit).

¹⁰ US Bankruptcy Court (SD Tex.) *Findings of Fact, Conclusions of Law and Order Confirming Joint Chapter 11 Plan of Talen Energy Supply, LLC and its Affiliated Debtors* (Dec. 20, 2022) (In re: Talen Energy Supply, LLC, Case No. 22-90054 (MI)).

Federal Power Act the change in ownership effected by Talen under the confirmed Chapter 11 plan.¹¹

F. Talen’s transmittal of Notice of Deactivation for Brandon Shores and PJM’s deliberations and approval of the Brandon Shores Grid Solutions Package.

On April 6, 2023, Talen transmitted notice to PJM of the proposed deactivation of the plant on June 1, 2025. The latter date is the first effective date of the 25/26 PJM capacity market delivery year and the outside, final date under the plant’s current obligations as a capacity resource in the PJM capacity market. On the same date as the PJM deactivation notice, Talen signed a modification to the settlement agreement with the Sierra Club, adding language providing as follows:

.... [I]n the event that the Secretary of the US Department of Energy issues an emergency order pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. 824a(c) for Brandon Shores, the deadline for Brandon Shores to cease combustion of coal shall be extended until the expiration of such order, provided that Brandon Shores has filed a deactivation notice with PJM prior to the 2025-2026 delivery year PJM capacity auction.^[12]

Pursuant to PJM’s rules for addressing generator deactivations, PJM, in response to the notice of deactivation of the plant, conducted an analysis of possible grid reliability violations resulting from the de-activation. As a result of that analysis, PJM determined that adverse grid reliability impacts would result from the plant’s deactivation. PJM then disclosed at a meeting of the Transmission Expansion Advisory Committee (“TEAC”) on

¹¹ *Talen Energy Supply, LLC*, 182 FERC ¶ 62,183 (March 30, 2023). Talen notified the Commission of its consummation of the transaction, effecting the confirmed chapter 11 plan by letter, dated May 22, 2023.

¹² *See* Amendment to Settlement Agreement by and among the Sierra Club and Talen Energy Corporation, Montour LLC, Brandon Shores LLC and HA Wagner LLC (dated April 6, 2023), section 3.

June 6, 2023, at a very high and generalized level, the nature of the violations and the proposed solutions. In the TEAC meeting disclosure, PJM also recommended transmission facility upgrades seemingly all assigned to the incumbent TOs (almost entirely affiliates of Exelon), and cost estimates for resolution of the grid reliability violations.¹³ PJM followed with a “second read” of its identification of grid reliability violations, recommended transmission upgrades and estimates of the cost of the upgrades, “fixed” at \$785 million for the Grid Solutions Package, at a TEAC meeting convened on July 11, 2023.¹⁴ It was then reported in a PJM Staff white-paper, entitled “[TEAC] Recommendations to the PJM Board”, that the PJM Board acted, at a meeting the following day, July 12, 2023, to approve the PJM staff recommended projects, including the Grid Solutions Package, for inclusion in PJM’s RTEP Baseline Projects, and to assign the construction of the projects to the incumbent TOs, including BGE, PECO, PEPCO (all affiliates of Exelon) and APS.¹⁵ In the staff white-paper, it is stated that: “No comments have been received as of this white paper publication date.” OPC offered comments and concerns verbally during the July 11, 2023, TEAC meeting about the Grid Solutions Package, indicating that it had already and would again submit written questions, and re-submitted its written comments and questions to PJM on the same

¹³ See PJM TEAC, *Generation Deactivation Notification Update* (June 6, 2023). OPC transmitted written questions and comments about PJM’s conclusions and recommendations contained in the June 6th TEAC presentation to PJM on June 29, 2023, and an expanded set of written questions and comments on July 11, 2023.

¹⁴ TEAC, *Generator Deactivation Notification Update*, July 11, 2023.

¹⁵ PJM Staff White Paper, *Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board* (July 2023).

date.¹⁶ The Staff white paper further describes the Grid Solutions Package as “immediate need” projects.

Subsequently, Exelon, during its 2d Quarter 2023 earnings conference, announced that the PJM Board had given it authorization to build \$870 million in transmission projects (presumably the Grid Solution Package as approved by the PJM Board at its July 12, 2023, meeting).¹⁷ This amount exceeds by ten percent the \$785 million previously reported as the capital cost of the package, as approved by the PJM Board.

ARGUMENT

A. PJM’s response to Brandon Shore’s deactivation is reactive, fails to conform to PJM’s governance documents regarding generator retirements and adversely impacts Maryland’s ratepayers.

Brandon Shore’s pending retirement was foreshadowed long before Talen’s notice to PJM of the plant’s deactivation in April 2023. Among the earlier and leading indicators that the plant was “at risk” for retirement are the age of the plant, the recent low-capacity factors, and the financial turbulence affecting the Talen group of companies. PJM itself

¹⁶ PJM convened two one-hour conference calls with representatives of OPC in August 2023, to discuss OPC’s concerns, after the PJM Board approval of the Brandon Shores Grid Solutions Package. In the second conference call entailing discussion of more technical matters, PJM representatives did not provide answers to a number of OPC’s written questions (nor to follow up questions provided in writing following the conference call) asserting that they implicated confidential matters not amenable to disclosure or possible PJM actions and/or considerations not authorized by PJM’s governance documents or authorities.

¹⁷ Exelon Corporation, Earnings Conference Call Second Quarter 2023 presentation (Aug. 2, 2023), p. 4 (“Awarded \$870 million in transmission projects by PJM to address reliability needs predominantly in eastern Maryland resulting from plant retirement, with expected completion by the end of 2028.”); E. Howland, *Exelon Utilities land \$870M in PJM transmission projects as Q2 earnings slip*, Utility Dive (Aug. 3, 2023).

has extensively analyzed this issue generally at an aggregate level across its entire operating footprint, pointing out the serious risks to reliability assurance, and to the functioning of the PJM capacity market due to the retirement of “at risk” resources exhibiting many of the same characteristics as those of Brandon Shores.¹⁸

PJM’s governance documents, rules and policies expressly require that generator retirement be considered among multiple factors in connection with the conduct of its planning and development of the RTEP. For example, they state that: “The [RTEP] shall reflect, consistent with the requirements of this Schedule 6, transmission enhancements and expansions; load forecasts; and capacity forecasts, **including expected generation additions and retirements**.....for at least the ensuing ten years”¹⁹ and that “[PJM] shall initiate the enhancement and expansion study process [for development of the RTEP] if:..... (iv) required to address **constraints or shortages as a result of expected generation retirements**.....”²⁰ and that PJM shall conduct “sensitivity studies, modeling assumption variations and scenario analyses [that] shall take into account of potential changes in expected future system conditions, including but not limited to....generation

¹⁸ See, PJM. *Energy Transition in PJM: Resource Retirements, Replacements & Risks* (Feb. 24, 2023).

¹⁹ Amended and Restated Operating Agreement of PJM Interconnection, LLC (the “OA”), Schedule 6 – Regional Transmission Expansion Planning Protocol, Section 1.4(b) (emphasis added).

²⁰ *Id.* At Section 1.5.1(a) (emphasis added).

patterns (including but not limited to the effect of assumptions regarding generation that is at risk for retirement...)." ²¹ PJM's Manual 14B is to similar effect.²²

Yet, until the transmittal of the notice of deactivation by Talen to PJM with respect to Brandon Shores, PJM does not appear to have done any pro-active review of the transmission or non-transmission alternatives to the plant's deactivation. Due to that result, layered on and exacerbating other adverse exogenous trends, Maryland now faces (a) a possible gap in grid reliability between the closure date of the plant if not operating on coal (June 2025) and the completion of the Grid Solution Package (December 2028) and (b) potentially large increases in the cost of electricity due to its responsibility to pay for (i) the revenue requirements of the major transmission build approved by the PJM Board and the subject of the PJM Filing and (ii) an unknown, but presumably very large, RMR cost of service charge from Talen for operation of Brandon Shores during the interim "gap" period.²³

²¹ *Id.* At Section 1.5.3 (emphasis added).

²² Manual 14B, PJM Region Transmission Planning Process, Section 2.3.3. Near Term Reliability Review (requiring sensitivity assessment in the Planning Assessment to consider variations to assumptions due to, among other factors, generation retirements), and Section B.2. (The RTEP shall reflect transmission enhancements and expansions load and capacity forecasts and generation additions and **retirements** for the ensuing five years).

²³ OPC submits that similar adverse dynamics, at lesser scale, apply to the Indian River Unit 4 ("IR4") unit RMR arrangement currently in litigation before FERC in docket ER22-1539 (the plant owner intending to deactivate the plant seeks approximately \$70 million/yr. in fixed cost recovery over a 4 ½ year period for an old 410 MW coal fired unit; entailing a much smaller TO sponsored grid solution, and located within the constrained DPL-South LDA). If the fixed cost revenue requirement sought by the plant owner in the IR4 RMR case were scaled to that of Brandon Shores, based on relative megawatts of capacity, the Brandon Shores RMR annual cost would be \$210 million/yr.

Moreover, these circumstances are exacerbated by the apparent control²⁴ by Talen of Brandon Shore's CIRs for the entire period it operates under the RMR arrangement. This deters the entry of new resources potentially providing an alternate market non-wires solution to the transmission build.

B. The process followed by PJM for the approval of the Grid Solutions Package was flawed.

The process followed by PJM in approving the Grid Solutions Package was flawed. PJM improperly invoked, as a procedural matter, the "immediate need" designation for the projects and did not comply with the public comment and consultation process applicable to such projects. One tool PJM has to evaluate a broader range of alternatives to a given transmission expansion is to conduct a competitive procurement among transmission alternatives pursuant to FERC authorization under FERC Order 1000.²⁵ PJM instead determined that the reliability "need" resulting from Talen's deactivation notice supported deeming the grid solutions package approved by the PJM Board as "immediate need" projects, presumably thereby shunting aside a competitive procurement of potential transmission solutions.

Complicating matters here, the continued operation of Brandon Shores beyond its proposed deactivation date, given the delay in completing the Grid Solutions Package, is

²⁴ OPC reserves its right to contest the interpretation and/or the justness and reasonableness of the measurement of the CIR retention period associated with a deactivating power plant.

²⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

part of the presumed solution to the grid reliability “need” triggering the designation of transmission projects. It is unclear how PJM is addressing the three and half year “gap” between the plant’s last date for operation on coal until the completion of the Grid Solutions package obviating the need for the plant.

The OA²⁶, as confirmed by and modified in response to Commission orders, provides that transmission projects are not subject to competitive procurement (and, therefore, are exempted “immediate need” projects) if the reliability “need” to be met must be addressed within three years. The Commission has rejected the view that such projects would also be restricted, through a bright-line test, to those where the in-service date of the solution would take less than the three-year period.²⁷ The overarching policy concern shaping the “immediate need” exception to competitive procurement is the time sensitivity and immediacy of the grid reliability need and the presumed ability of the incumbent TO to respond more quickly. Not squarely addressed is the question of whether the immediate need exemption applies, in circumstances like those here, where (1) the incumbent TO transmission solution will take significantly longer than three years to accomplish and where both the immediacy, and (2) the TO’s ability to act in time are either not or less present or apparent, tipping the balance in favor of a broader consideration of alternatives, and (3) the need for the transmission project can be delayed by keeping the plant in service. An incumbent TO sponsored solution that will take over

²⁶ Schedule 6, section 1.5.8(m).

²⁷ *PJM Interconnection LLC*, 156 FERC ¶ 61,030, PP 22-24 (2016).

five years to complete (as is the case here) should not be presumptively an exempted immediate need project (particularly one where the continued operation of the plant or alternatives must be considered for the “gap” period in order to maintain grid reliability).

The Commission has established general criteria to structure further the scope of the immediate need exemption, requiring enhanced disclosures, consultations and justification from the regional transmission organization (“RTO”) to support application of the exemption. Among these criteria, in relevant part, here, are the following:

- ii. The [RTO] must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity (Criterion Two);
- iii. The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier (Criterion Three);
- iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available (Criterion Four).... [28]

The Commission approved changes to PJM’s processes responsive to these criteria.²⁹

In response to Criterion Two, PJM committed to posting on its web-site transmission project-specific supplemental documents that detail each identified immediate need reliability violation that PJM proposes to exempt from the competitive proposal window

²⁸ *PJM Interconnection, LLC*, 142 FERC ¶ 61,214 (2013) quoted in *PJM Interconnection LLC*, 174 FERC ¶ 61,117 (2021) P 3.

²⁹ *PJM Interconnection, LLC*, 174 FERC ¶ 61,117 (2021).

process and to include these materials in the TEAC meeting materials in order to provide greater detail regarding reliability violations and system conditions for reliability violations identified as needed in three years or less.³⁰ With respect to its consideration of the Grid Solutions Package for the Brandon Shores deactivation, PJM posted materials for TEAC meetings on two occasions that provided skeletal descriptions responsive to these commitments. OPC submits that these were deficient.

In response to Criterion 3, PJM committed to provide for public review the following details: operating procedures related to the identified violation, the underlying cause of the violation, and issues specific to that TO. The Commission has noted with respect to Criterion 3 that: “In all future supplemental documents, we expect PJM to include an explicit explanation of other transmission or non-transmission options that it considered before designating and immediate need reliability project.”³¹ In the case of the Brandon Shores deactivation review, this requirement was not complied with or PJM, improbably, did not consider any such alternatives. No such alternative options were explicitly explained.

To comply with the Commission’s directive regarding Criterion Four, PJM committed, in relevant part, to post on its website all stakeholder comments and answers

³⁰ In its filing with the Commission in the proceeding, PJM offered two examples of the filings it would make in the future for immediate need exempted projects, relating to proposed projects in the Northern Neck and Manassas, VA areas. *Id.* P 30. As described by the Commission: “Each of these Compliance Attachments provides an explanation of the reliability violation and system conditions for which there is a time-sensitive need and includes sufficient detail of the need and time-sensitivity, including the details of the specifics of the violation and why the violation arose.” *Id.*

³¹ *Id.* at P 32.

(whether presented in writing or submitted verbally at TEAC meetings) related to immediate need reliability projects and to develop a web page designated solely to immediate need reliability issues where all comments will be accessible. Here, OPC submitted written comments and questions to PJM on two occasions between and immediately following the TEAC meetings regarding the Grid Solutions Package. Neither submittal was posted and made publicly available to OPC's knowledge; nor were any answers to OPC's questions from PJM posted to the PJM website.

Finally, in considering possible alternatives to the solutions selected by PJM, including a still unknown approach to addressing the 2025-2028 reliability gap without continued operation of the plant, it is OPC's understanding that PJM did not consider or evaluate any projects in the interconnection queue in the BGE LDA because they lack signed ISAs. As discussed above, a major deterrent to new entry and the execution of an ISA is the coupled commitment to transmission upgrades, potentially made excessively burdensome by the retention of CIRs by the owner of the retiring plant. PJM also informally advised OPC that it did not consider any alternatives for repurposing of Brandon Shores, such as converting it to a synchronous condenser, to assist in addressing the grid reliability needs, potentially at lower cost, arising from the shut-down of Brandon Shores.³²

³² Case specific technical and other constraints not disclosed by PJM to OPC may make this alternative infeasible, but, seemingly this alternative merits some level of investigation and consideration commensurate with the magnitude of the planning decision. There are a number of examples where this technology has been adopted in arguably analogous circumstances. *E.g.*, First Energy, enabled and approved by PJM, successfully adopted such a practice to address grid reliability issues arising from the shut-down of its Eastlake, Ohio, generating units. *See, e.g.*, PJM Staff Whitepaper, *TEAC Recommendations to the PJM Board* (May 2012), p. 7.

PJM staff also did not consider or evaluate the possibility of alternatives resulting from the recently enacted the “Maryland Energy Storage Act.”³³ That law authorizes the Maryland Public Service Commission to implement a competitive procurement program by July 1, 2025 for up to 750 MW of energy storage facilities by the end of delivery year 2027 and a cumulative maximum of 3000 MW by the end of delivery year 2033. A searching, full and transparent review of these various potential alternatives, or possibly partial alternatives, should have been conducted by PJM in connection with its response to the Brandon Shores’ notice of deactivation. OPC is not aware that any such review was undertaken.

C. The procedures for cost recovery for the Grid Solutions Package leave ratepayers unprotected from unjust and unreasonable rates.

OPC is not aware of any disclosure by PJM of the nature and specifics of its scrutiny and analysis of the cost estimates for design and construction of the Grid Solutions Package. Such estimates, and supporting justifications, were presumably supplied to PJM by the affected TOs. Nor is OPC aware of any review of the development and completion risk or constructability of the projects comprising the package, which were also presumably undertaken. Commensurate with the large scale of the projects, this scrutiny

³³ Chapter 570 of the 2023 Laws of Maryland. PJM did indicate to OPC in the informal technical meeting provided to OPC representatives in August that storage capacity, due to its charging needs, had technical limitations as a grid solution. However, PJM had apparently not considered (and, therefore, seemingly had not evaluated) the new broad procurement authorities granted to the Maryland’s public service commission, which presumably can be responsive to the issues posed by the Brandon Shores retirement, over the extended period before the Grid Solutions Package approved by the PJM Board can be completed.

and analysis should have been done and public disclosure of this information should be required at a minimum.

Amplified by the 10% increase in the projects' cost estimate by Exelon reported only several weeks following the PJM Board's approval of the same projects, cost containment and oversight are even of greater concern. In addition, cost recovery of the projects from ratepayers, including likely future requests to the Commission by the affected TOs for additional financial assurances and benefits (such as for pre-approval of recovery of abandonment costs and return incentives) will lack rigorous scrutiny of the prudence of the investment. OPC anticipates that the TOs will seek recovery of such costs through their FERC filed formula rates, in a truncated manner, further foreclosing adequate public review and scrutiny of the costs. The Federal Power Act's mandate that rates be just and reasonable, in this particular context, supports requiring that PJM, assisted by independent third-party experts, conduct a consolidated review and scrutiny of the costs over the duration of the projects' design, permitting and construction, accessible to public review.

CONCLUSION:

The PJM Filing is deficient, because it carries forward PJM's approval of major transmission projects selected by PJM through a flawed process to respond to the deactivation notice for the Brandon Shores power plant. The PJM submission, if approved by the Commission as filed, will result in unjust and unreasonable rates contrary to the Federal Power Act. Accordingly, OPC requests that the Commission reject the filing, subject to re-filing and PJM's actions conforming to the modifications requested

by this protest. OPC also asks the Commission to commence an investigation to determine and decide appropriate remedies pursuant to section 206 of the Federal Power Act to address the matters discussed in this protest.

Respectfully submitted,
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September 13, 2023.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 13th day of September 2023 caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Philip L. Sussler

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