UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

H.A. Wagner LLC	Docket Nos. ER24-1787-001 ER24-1787-000
Brandon Shores LLC	ER24-1790-001 ER24-1790-000

REQUEST FOR REHEARING OF THE MARYLAND OFFICE OF THE PEOPLE'S COUNSEL

Pursuant to Rule 713 of the Commission's Rules and Regulations,[1] the Maryland Office of People's Counsel ("MPC") submits this request for rehearing of the Commission's order on contested settlement issued in these proceedings on May 1, 2025 (the "May 1st Order").[2]

The May 1st Order approved a settlement filed in these proceedings that would set rates and other terms and conditions pursuant to which the H.A. Wagner and Brandon Shores power plants (the "Power Plants")[3] will provide service under Part V of the Open Access Transmission Tariff ("OATT") of PJM Interconnection LLC ("PJM") (referred to here as "Part V Service"; sometimes referred to also as "reliability must-run" or "RMR"

[1] 18 CFR § 385.713 (2024).

[2] 191 FERC ¶ 61,098 (2025).

[3] The Power Plants (Wagner Generating Station Units 3 and 4, and Brandon Shores Generating Units 1 and 2, respectively) are owned by remote, wholly owned subsidiaries of Talen Energy (H.A. Wagner LLC for the Wagner Generating Station Units, and Brandon Shores LLC for the Brandon Shores Generating Units). The owners of the Power Plants are referred to herein as "Talen."

service). PJM relies on Part V Service to protect system reliability while transmission upgrades needed to accommodate the requested generator resources deactivation(s) are under development and in construction prior to their commercial operation.

Talen requested that the Power Plants deactivate on June 1, 2025, but then, pursuant to its initial filings for Part V Service, dated April 18, 2024 (the "Talen Initial Filing"), and then, as restated in the contested settlement approved by the Commission in the May 1st Order, agreed to provide Part V Service for the period commencing on June 1, 2025 and running until at least December 31, 2028 (or a further period) to match the earliest date projected for completion of the transmission upgrades needed to allow deactivation of the Power Plants while protecting grid reliability.

For the reasons stated below, the Commission should grant rehearing of the May 1st Order, reject the contested settlement, and institute hearing procedures to determine a just and reasonable rate for the provision of Part V Service by the Power Plants.

SUMMARY OF REQUEST FOR REHEARING

The May 1st Order would sanction Talen's compensation for operating the Power Plants for provision of Part V Service at nearly twice the level of compensation as determined under the Commission's long established "cost of service" principles, anchored by evidence of record in this proceeding. This excessive level of compensation is contrary to the dictates of the Federal Power Act ("FPA") by approximately $83

million annually and by more than $300 million over the full term of Part V or RMR service anticipated to be provided by the Power Plants.

Talen extracted this excess level of compensation in part through explicit threats to shut down the Power Plants absent its receipt of anything less, thereby putting at risk the reliability of the grid.[4] These threats by Talen are directly contrary to its filings in these proceedings. The PJM OATT expressly provides for owners of generation resources eligible for Part V Service to elect to file with the Commission for "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."[5] By making the Talen Initial Filing, Talen opted for "cost of service" compensation consistent with Part V Service. Talen's threat to shut down the Power Plants—and the forbearance of acting on that threat identified by it as consideration for the contested settlement—violates this PJM OATT provision and is

[4] Talen makes this threat as follows (Talen Settlement Offer, Cover Letter (Jan. 27, 2025) at p. 7 (footnotes omitted):

> Failure by the Commission to approve the Offer of Settlement would result in not only collapse of the settlement process but also the permanent deactivation of the Wagner facility before the completion of the transmission upgrades that PJM has stated are critically needed. Wagner cannot, and will not, be in a position where it continues to operate its facility, contrary to its wishes, yet does not know the rates, terms, or conditions of such service. The Commission has been clear that it cannot force Wagner to run. Absent approval of the Offer of Settlement, however, Wagner will do just that.

Talen's statement, conditioning its threat, namely that it "cannot and will not be in a position where it continues to operate its facility contrary to its wishes, yet does not know the rates, terms and conditions for such service" sets up a false alternative. On its own volition Talen filed for Part V Service cost of service treatment; the outcome of the proceeding considering its filing determined by the Commission conducted under the constraints of the Federal Power Act and consistent with Commission precedent assures Talen of just and reasonable rates and terms and conditions.

[5] PJM OATT, Part V, section 119.

contrary to Talen's choice to receive cost of service treatment in return for providing Part V service. The May 1st Order, if not modified through rehearing, would efface these violations of the FPA and sanction Talen's exercise of market power in effecting terms contained in the contested settlement which are unjust and unreasonable within the meaning of the FPA.

The May 1st Order wrongly concludes that the overall result of the contested settlement it purports to approve balances the excessive compensation paid to Talen against and should be outweighed by other factors, including: (a) potential revenue offsets to load from inclusion of the Power Plants in the supply offer stack in two future upcoming PJM capacity market annual base residual auctions ("BRAs")—but not for the most immediate, already completed BRA for delivery year 2025/2026 (the first year when the Power Plants' RMR service will be supplied); (b) the consent of other settling parties to the contested settlement; and (c) the continued operation of the Power Plants—albeit under the duress of their threatened shut down by Talen—during the period from the Power Plants' proposed deactivation dates to the date when the replacement transmission upgrades are placed into service.

These additional factors are insufficient to offset the clear violations of the FPA embedded in the contested settlement resulting from the excessive compensation paid to Talen and the settlement's formation under Talen's threat of plant shutdown in violation of PJM's OATT. These additional factors have not been quantified nor has the net benefit of these factors been compared to the compensation in the contested settlement that substantially exceeds the cost of service, and they do not support approval of the

contested settlement under the Commission's *Trailblazer* line of precedent for approval of contested settlements.[6] Favorable action on MPC's request for rehearing does not put Talen's ability to receive fair compensation in exchange for the provision of Part V Service at risk. Talen has the continued assurance that, through any subsequent proceedings if ordered by the Commission in a grant of MPC's request for rehearing of the May 1st Order, it will receive compensation for the Power Plants during the period of providing Part V Service at its proper level of cost of service, as finally approved by the Commission.

The May 1st Order, if not modified through rehearing, also adversely impacts principles of fundamental importance to the continued functional operation of PJM's administered markets. If a generation resource owner can extract compensation well in excess of the resource's cost of service when qualifying for Part V Service, because, inherent in Part V Service eligibility, its continued operation is deemed essential to preserving grid reliability, then generators in similar circumstances to Talen here can—and would be given an incentive to—similarly pursue uncapped levels of compensation by opting for so-called "cost-of-service" treatment under PJM OATT, Part V. In that

[6] *See*, *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082 (1998); *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 at 62,341 ("Trailblazer II"), *order on reh'g*, 87 FERC ¶ 61,110, *aff'd*, 88 FERC ¶ 61,168; *see also Pub. Utils. Comm'n of Cal. v. El Paso Natural Gas Co.*, 105 FERC ¶ 61,201 at P 44 (2003), *reh'g denied*, 106 FERC ¶ 61,315 (2004). Trailblazer II summarizes four approaches for the Commission to approve contested settlements: Approach No. 1, where the Commission renders a binding merits decision on each of the contested issues; Approach No. 2, where approval of the contested settlement is based on a finding that the overall settlement as a package provides a just and reasonable result; Approach No. 3, where the Commission determines whether the benefits of the settlement out balance the nature of the objections, in light of the limited interest of the contesting party in the outcome of the case; and Approach No. 4, where the Commission approves the settlement as uncontested for the consenting parties, and severs the contesting parties to litigate the issues. The May 1st Order summarizes this precedent at P 25.

event of approval, the election by resource owners of cost-of-service treatment under PJM OATT, Part V, sec. 119 would be better described as "multiplied cost of service." Approval would improperly tilt incentives against operating in the market, particularly for owners of older plants in circumstances similar to those of the Power Plants, in favor of opting for Part V Service. The result is directly contrary to the Commission's general admonition that RMR operation is highly disfavored and undermines power markets.[7] The damage flowing from the contested settlement if approved by the May 1st Order is further exacerbated by other structural and bespoke elements of PJM's existing "voluntary" RMR regime.[8]

[7] *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116, at P 16 (2015), *order on compliance and reh'g*, 155 FERC ¶ 61,076 (2016), *order on compliance and reh'g*, 161 FERC ¶ 61,189 (2017), *order on clarification and reh'g*, 163 FERC ¶ 61,047 (2018); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 10 (2012). *See 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").

[8] PJM's RMR regime is "voluntary" in nature. PJM OATT, Part V, sec. 113.Yet the Commission has declared as a general matter (without directly deciding the matter for PJM), that resource owners in RTOs with voluntary RMR regimes are entitled to a range of compensation extending from recovery of going forward costs up to full cost of service. *See, e.g., NYISO*, 150 FERC ¶ 61,116 (2015) at P 17; *See also, NYISO, Order on Compliance and Rehearing*, 155 FERC ¶ 61,076 (2016) at P 84; *MISO*, 148 FERC ¶ 61,057 at P 84 (2014); *CAISO*, 168 FERC ¶ 61,199 at P 84 (2019). A partial rationale for this posture is to equilibrate the negotiating leverage, in a voluntary RMR regime, that the owner of a resource qualifying for RMR service has due to its necessary contribution to grid reliability. MPC and others have sought to adjust and regularize this problem of undue negotiating leverage in PJM, either by leaving in place PJM's voluntary RMR regime, but equating compensation to recovery of at a minimum going forward costs, *see, e.g.*, MPC and PJM IMM, request for rehearing in *NRG Power Marketing LLC*, ER22-1539 et al., and further appeal by MPC in *Maryland Office of People's Counsel v. FERC*, Federal 4th Circuit Court of Appeals, Case No. 25-1561; or changing PJM's RMR regime so that RMR service is mandatory, provides for cost of service compensation as determined by the Commission and includes additional protections regarding deactivation advance notice periods and participation in PJM's capacity market. *See, Complaint of Joint Consumer Advocates*, EL 25-18 (Nov. 18, 2024) at 5. The Commission, to date, has not acted in a consistent or balanced manner on the suite of circumstances affecting RMR service in the PJM footprint. This circumstance is context for the problems raised by the contested settlement.

These results are especially harmful to electric ratepayers in Maryland. Talen's excessive level of compensation for Part V Service as embedded in the contested settlement approved by the May 1st Order goes into effect on June 1, 2025, which will only add to the huge increase in capacity market payments beginning at the same time for Maryland ratepayers as a result of PJM's conduct of the BRA for delivery year 2025/2026.[9] This context should further inform the Commission's consideration of MPC's request for rehearing.

BACKGROUND

Talen filed with the Commission for "cost-of-service" treatment under PJM, OATT, for Part V Service on April 18, 2024, making separate applications for the Brandon Shores Power Plant and for the Wagner Power Plant (the "Talen Initial Filing"). The Commission separately docketed the applications as ER24-1787 (for Wagner) and ER24-1790 (for Brandon Shores). MPC filed its timely intervention in both proceedings

[9] Among multiple, painful ironies, punishing to Maryland ratepayers—PJM determined, in a filing approved by the Commission, that the capacity from the Power Plants should be included in the PJM capacity market supply offer stack, but only for future annual base residual auctions for subsequent delivery years and not for the delivery year 2025/2026, the first year when the Talen RMR payments are due. The exclusion of the Power Plants from the supply stack in the 2025/2026 BRA, due to their deactivation under PJM's prior RPM rules even while continuing to operate under Part V Service, has been estimated to have increased the footprint wide clearing price for BRA 25/26 by approximately $100/MW-day (or an increase of approximately 60%) from what would otherwise have been the clearing price, if the Power Plants were included in the supply offer stack. This increase in clearing price also resulted in a net increase in annual revenues to Talen of $360 million, paid on account of Talen's other power plants operating in the PJM footprint and remaining in the market. MPC, *Bill and Rate Impacts of PJM's 2025/2026 Capacity Market Results & Reliability Must-Run Units in Maryland* (Aug. 2024) at 27.

and protested the filings by pleading dated May 16, 2024[10]. The Commission issued its initial order on the Talen Initial Filing, accepting the filing, subject to refund, but found that the proposed rates were likely unjust and unreasonable and set the matter for consideration before a settlement judge, pending hearing.[11] Talen and other parties to the proceedings filed with the Commission a proposed settlement on January 27, 2025. MPC and Monitoring Analytics LLC (the PJM independent market monitor) filed separate comments on Feb. 18, 2025, contesting the settlement filing sponsored by Talen, and separately filed answers further contesting the settlement on March 13, 2025.The Commission's trial staff filed comments, dated Feb. 18, 2025, not opposing (but not agreeing to) the now contested settlement. Thereafter, the Commission issued its May 1st Order approving the contested settlement. The May 1st Order does not acknowledge that MPC filed a motion for leave to file answer and answer to the contested settlement, by pleading dated March 13, 2025.[12]

[10] MPC's Initial Protest was filed jointly with Southern Maryland Electric Cooperative.

[11] *H.A. Wagner LLC and Brandon Shores LLC*, 187 FERC ¶ 61,176 (2024).

[12] As noted below, the May 1st Order is further in error in its discussion of issues raised in MPC's Answer, which the Commission apparently did not consider in issuing the order.

ARGUMENT

I. Contrary to the Commission's stated rationale in the May 1st Order, it may not approve the contested settlement under the *Trailblazer* Approach 2.

The Commission anchors its conclusions in the May 1st Order to purported adherence to the *Trailblazer* Approach 2. The contested settlement fails to satisfy the requirements for approval under the *Trailblazer* Approach 2 because it (1) inflates the annual fixed revenue requirement by $83 million over the actual annual cost of service of the Power Plants, as reflected in FERC Trial Staff's filings, supported by affidavit testimony; and (2) reflects Talen's exercise of market power via its threats to shut down the plants absent the excessive level of compensation. The contested settlement thus violates the FPA and the PJM OATT and is contrary to Talen's decision to seek cost of service treatment under Part V of the OATT. The excessive compensation achieved through Talen's exercise of market power distorts the black-boxed contested settlement amount and undermines the May 1st Order's finding that the contested settlement can be just and reasonable.

Under the *Trailblazer* Approach 2, the Commission "may approve a contested settlement as a package if the overall result of the settlement is just and reasonable." However, this approach requires that the Commission engage in a "'detailed and independent cost-benefit analysis of approving the settlement versus continued litigation.'"[13] Informing the Commission's *Trailblazer* decisional framework is the D.C.

[13] *ISO-NE PTOAC* at P22 (citing *Trailblazer* at 62,342).

Circuit's decision in *Laclede Gas Co. v. FERC*, 997 F.2d 936 (D.C. Cir. 1993), requiring that the Commission make reasoned and supported findings regarding the level of compensation embedded in a proposed settlement. As the Commission has stated in interpreting the mandate of the *Laclede Gas* decision: "the Commission cannot approve a contested settlement simply because the settlement provides a result within the middle of the various parties' litigation positions."[14]

Here, the annual fixed revenue requirement ("AFRR") embedded in the contested settlement (of $180 million) is not supported by record evidence. Rather, it simply represents a relatively small discount from the originally requested AFRRs contained in Talen's Initial Filings (of $215 million). In fact, based on Trial Staff's Reply Comments, anchored by accompanying redacted affidavits of Trial Staff witnesses, the contested settlement's AFRR is $83 million (or 86 percent) *in excess* of an appropriate AFRR of approximately $97 million.

Trial Staff determined the Power Plants' annual cost of service through proper application of the Commission's cost-of-service precedent. Specifically, Trial Staff's Reply Comments append the affidavit of Trial Staff Witness, Michael B. Healy. In his affidavit, Mr. Healy states the following:

> The purpose of this affidavit is to establish a reasonable AFCC [15] from the cost-of-service models based on Commission precedent and

[14] *Id.* at 22. *See also Laclede Gas* at 947 (cited at *ISO-NE PTOAC* at 22) ("The mere fact that the settlement figure fell somewhere within the vast gulf between United's estimate of its own liability … and the alternative advanced by Enforcement … provides scant support for the Commission's decision.").

[15] AFCC, the Annual Fixed Cost Charge, as used by the Trial Staff witness is the same as the AFRR.

> principles using Trial Staff recommended inputs and cost-of-service data provided by Talen [….]
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> The models demonstrate that both the Talen as-filed and settlement AFCCs are significantly above the rates supported by the Trial Staff. I calculate a reasonable cost-based AFCC of $68,149,926 for Brandon Shores and $29,192,047 for Wagner, compared to higher Talen as-filed AFCCs of $ $175,432,886 and $40,343,114, and higher settlement rates of $145,000,000 and $35,000,000, respectively.[16]

Talen anchors the level of compensation in the contested settlement by reference to the initial filings for RMR arrangements for the Power Plants. Talen describes the settlement's proposed level of compensation as "reasonable" because there is a relatively slight discount from the AFRR sought in Talen's Initial Filings. As described above, simply being lower than Talen's litigation position is not sufficient to be just and reasonable. Further, Talen's litigation position is an infirm starting position to determine reasonableness.

In Talen's Initial Filing, it sought to establish inputs for the determination of the rate base to determine the AFRR based on a 2015 fair-market valuation of the Brandon Shores Power Plant (asserted to be $648 million)[17] plus additional levels of compensation for the Power Plants based on an alleged opportunity cost of development of the Power Plants' site. Both arguments are contrary to clear Commission precedent.[18] They

[16] FERC Trial Staff Reply Comments (Feb. 26, 2025), Healy Affidavit at PP 16 and 17 (emphasis added).

[17] *See* Talen Initial Filing, ER24-1790, Exhibit No, BSH-001(prepared testimony of T. Schatzki) at 18.

[18] *See* MPC Initial Protest of Talen Initial Filing, ER24-1790 et al. (May 16, 2024) at 16-27, citing, at 18, to *Lawrenceburg Power, LLC*, 173 FERC ¶ 61,166 (2020) PP 46 and 47. *See also Central Vermont Public Service Corp*., 120 FERC 61,143, at P 9 (2007) ("[W]hen the amount paid for the asset is less than

incorrectly ignore the effect of Talen's predecessor's 2012 acquisition of the Power Plants and run contrary to the Commission's original cost test for the determination of rate base. Correctly utilizing the 2012 purchase price would allocate $178 million of the 2012 purchase price to the Brandon Shores plant to support the determination of the plant's rate base—some 72 percent less than Talen's asserted value.[19] The 2012 purchase price, for a transaction effected between third parties, is the correct anchor point for determining the Power Plants' rate base, not, as Talen would have it, a later appraisal done in connection with an internal reorganization. Contrary to Commission's cost of service precedent, Talen also invents a site value, based on wholly speculative future site development following shut-down of the Power Plants, that further improperly expands Talen's claimed rate base. Even if Talen's arguments were to be considered and thereby inflate the reasonableness of the range of AFRRs affected by settlement, they raise major factual issues which cannot be decided on the record currently before the Commission.[20]

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the depreciated original cost, the negative acquisition adjustment is recorded as part of the accumulated provision for depreciation"); *Constellation Mystic Power LLC*, 165 FERC at P 64, *order on rehearing*, 172 FERC ¶ 61,044, at P 31 (2020), *aff'd, Constellation Mystic Power LLC v. FERC*, 45 F.4th 1028 (D.C. Cir. 2022) (affirming the Commission's application of the original cost test recognizing the negative acquisition adjustment from the exchange in lieu of foreclosure). In justifying the settlement offer, Talen states: "The rates set forth in the filed CORS were based on long-standing Commission cost-of-service ratemaking principles. . . ." Talen Settlement Offer Filing (Jan. 27, 2025) at 4. This is plainly false for the reasons set forth in the text and in MPC's Initial Protest of the Talen Initial Filing at 16-26.

[19] *See* MPC Comments, ER24-1790 et al. (Feb. 18, 2025) at 14-15; MPC Initial Protest, ER24-1790 et al. (May 16, 2024) at 27-31.

[20] *See, e.g.*, Talen Initial Filing in ER24-1790 (April 18, 2024), Exhibit No. BSH-001, Prepared Direct Testimony of Todd Schatzki on behalf of Brandon Shores LLC at 18 ("From 2000 to 2010, Constellation invested approximately $1.038 billion in the Brandon Shores facility, with $900 million occurring after 2008. I calculate the book value of these capital expenditures exceeds the fair market value of the Brandon Shores plant when acquired by Talen, which I understand to be $648 million."). *None* of these

The "harm" to the public interest arising from the level of excessive compensation embedded in the contested settlement cannot properly be balanced against other factors to justify approval of the settlement under the *Trailblazer* Approach 2.

Moreover, consistent with the *Laclede Gas Co.* precedent, the excessive level of compensation embedded in the contested settlement cannot be supported and is not just and reasonable on its face. Reports of Talen's discussion of the contested settlement with the investment community indicate that even FERC Trial Staff's estimate of the Power Plants' cost of service may be inflated. Bank of America analysts recently reported, for example, Talen discussed with them that the contested settlement level of compensation could deliver $110 million in annual earnings before interest, taxes, depreciation, and amortization.[21] A hearing before the Commission, enabled by full discovery, is required to determine the just and reasonable amount of compensation due to Talen for the RMR arrangements.

matters—including the book value of the capital expenditures on the Brandon Shores facility prior to 2015, the implied non-recognition of the 2012 sale to Talen's predecessor in interest and whether the book value of the capital expenditures, adjusted by proper application of the Commission's original cost test, exceeds the plant's fair-market value—are supported by substantial evidence of record in these proceedings. The values are simply the bald and otherwise unsupported assertions of Talen's witnesses. MPC intends to litigate these factual issues if the Commission acts favorably on MPC's request for rehearing and/or if raised by Talen in a subsequent hearing of these matters.

[21] *See, e.g.*, Bank of America Securities Global Research, *Talen Energy* (March 6, 2025). ("Events In '24: Data Center, Share Repurchases, RMR Agreements and More. In 2024 Talen hit many milestones, including…. Reaching an RMR agreement (+$110 mn/year in EBIDTA) ….."). In the Talen Initial Filings, Talen claimed approximately $92 million in annual O&M and corporate A&G expense.

II. Talen's threat to abandon RMR service cannot justify inflating the annual cost of service of the Power Plants by $83 million.

The May 1st Order, endorsing the views of Talen, and the other settling parties and FERC Trial Staff (in justifying its lack of objection to the contested settlement), relies on purported offsetting factors resulting from the contested settlement to dilute the adverse impact of the excessive level of compensation embedded in the contested settlement. These asserted other factors are not sufficiently described and not supported by record evidence and, regardless, are insufficient to render the "package" of components of the contested settlement "just and reasonable" as a whole, as it must be, for approval under *Trailblazer* Approach 2.

At the outset, the Commission in the May 1st Order infers that an offsetting benefit of the contested settlement is Talen's willingness to enter into RMR arrangements at all. Talen asserted on the record that, absent approval of the contested settlement and approval of anything less than its $180 million AFRR, it would not enter into an RMR arrangement for the Power Plants and instead shut them down and thereby put at risk the reliability of power supply to the greater Baltimore, Maryland area and, potentially, the PJM power grid. But the Talen Initial Filings request that the Power Plants be put under an RMR arrangement under the "cost of service" method of compensation. That method is provided under OATT, sec. 119, and requires a FERC determination of the cost of service. Talen's assertion that, absent payment of the contested settlement's amount of compensation (or anything less than that amount)—inflated some 86 percent in excess of a properly determined cost of service—it will not operate the Power Plants is inconsistent

with its prior election under OATT, sec. 119 for cost-of-service compensation contained in the Talen Initial Filings.

Rather, Talen's tying of the excessive charges set forth in the contested settlement to continued operation of the Power Plants evidences a raw exercise of improper leverage over the settling parties and the public, exploiting the market power Talen has by virtue of the reliability contributions of the Power Plants. As such, it is contrary to the public interest, and contrary to the FPA. Put simply, owners of electric generating units are not permitted to intentionally exercise market power through their decisions relating to their generating units. Moreover, Talen's asserted premise to its threat to shut down the Power Plants if the contested settlement is not summarily approved—namely, that it cannot operate the Power Plants without "know[ing] the rates, terms and conditions of such service"[22]—is infirm and cannot be a basis for the Commission's approval of the contested settlement under *Trailblazer* Approach 2. Just like its threat to shut down the plant without excess compensation is an unlawful exploitation of its market power, its claim that it cannot operate without knowing the rates, terms, and conditions of service would require approval of any contested settlement, no matter what is just and reasonable. Talen will recover rates at its cost of service and under the terms and conditions, as determined by the Commission.

MPC does not object to consideration of the non-rate terms and conditions of the contested settlement, and Talen is assured of compensation at just and reasonable levels

[22] *See* Talen Settlement Offer filing (Jan. 27, 2025), Talen Cover Letter at 7.

for operation of the Power Plants. That just and reasonable compensation is FERC's determination. Talen will both (i) receive compensation as filed in Talen's Initial Filings, subject to refund of amounts in excess of FERC's final ruling, immediately from the commencement date of the provision of Part V Reliability Service on June 1, 2025, and (ii) collect compensation that conforms to the FPA's requirements for just and reasonable levels, as determined by FERC in any litigation of the compensation due the Power Plants, should FERC act favorably on the MPC's request for rehearing.

If need be, Talen's threatened course of action to shut the Power Plants down absent full recovery of the contested settlement's AFRR can be foreclosed by an order issued by the Secretary of the Department of Energy, pursuant to FPA, section 202(c) directing the Power Plants to continue operation given their need for the maintenance of grid reliability.[23]

In these circumstances, the purported benefit of forestalling Talen's "veto" regarding possible future deployments of the Power Plants is contrary to the public

[23] To address this eventuality flowing from Talen's asserted possible future course of action, MPC transmitted correspondence to the PJM Board on Feb. 28, 2025, asking PJM to submit an application to the Secretary of Energy under section 202c(a) of the FPA as a prophylactic, pro-active measure to assure continued operation of the Power Plants in the event Talen were to seek to cease operation of the Power Plants. The PJM Board responded by correspondence dated March 11, 2025, indicating that PJM was considering such action, if required, subject to its timeliness consistent with the DOE's requirements for the issuance of such order. This correspondence is available on the PJM website under the tab for PJM Board communications. MPC did not make this request to the PJM Board lightly; but rather made it considering the seriousness of Talen's asserted potential course of action to shut down the Power Plants absent Talen's receipt of compensation at the levels set forth in the contested settlement far in excess of their "cost of service." The Department of Energy recently issued such an order requiring Consumers Energy to delay shutting down the J.H. Campbell power plant in Michigan. *See* https://www.energy.gov/sites/default/files/2025-5/Midcontinent%20Independent%20System%20Operator%20%28MISO%29%20202%28c%29%20Order_1.pdf

interest. As purported "consideration" for the settlement, it does not offset the unjust and unreasonable levels of compensation sought by the contested settlement so as to render it, if considered as a package, just and reasonable.

III. Other factors fail to support the $83 million inflating of the annual cost of service.

The May 1st Order also relies on the finding that there are additional "offsetting" factors to balance against the contested settlement's excessive AFRR. These factors include other terms and conditions of the Continued Operations Rate Schedules ("CORS") defining the operation of the Power Plants during the term of the Proposed RMR arrangements. These terms and conditions are insufficient to meet the approval requirements under the *Trailblazer* Approach 2.[24] Their insufficiency is demonstrated, in part, by a comparison to the terms of the RMR arrangement for the Indian River Unit 4 ("IR4") power plant, recently approved by FERC,[25] which showed that proposed settlement terms are less beneficial to electric consumers than the terms approved for IR4. But unlike the IR4 RMR arrangement, the CORS embedded in the contested settlement must (but do not) provide offsetting benefits relative to the documented excess compensation awarded by the contested settlement. That excess compensation is 86

[24] The issues raised by MPC, infra, were also presented in MPC's Answer, dated March 13, 2025, but were not considered in the May 1st Order. The May 1st Order incorrectly summarizes these issues and is in error.

[25] *NRG Business Marketing LLC, et al., Order on Contested Settlement*, 190 FERC ¶ 61,026 (Jan. 16, 2025).

percent, or $83 million per year, as documented in FERC Trial Staff's AFRR.[26] As explained below, these other factors do not provide commensurate offsetting benefits, nor is there substantial record evidence in this proceeding to support such a conclusion.[27]

Performance incentives. The performance incentive provision is so limited in its application that it provides almost no benefit to consumers. The contested settlement provides for a payment hold-back of $5 million from the proposed AFRR of $180 million (comprising 4.17 percent of the Power Plants' AFRR) and conditions payment to Talen of the hold-back on application of a formula[28] that is reduced by energy "requested where [in relevant part] (1) the Unit was unable to perform due to an event of Force Majeure…"[29]

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[26] In citing to the IR4 RMR arrangement as a parameter for evaluating the contested settlement, MPC does not concede that the terms and conditions of the IR4 RMR arrangement are just and reasonable. In negotiating the IR4 RMR arrangement terms and conditions, the IR4 plant owner presumably exercised market power accruing to a RMR resource in PJM. Instead, the IR4 RMR arrangement terms and conditions should comprise a bare minimum for measuring the "benefit" deemed to result from the contested settlement's CORS, particularly when anchored to the substantial record and unique evidence of the contested settlement's excessive cost, which merits greater offsetting concessions to protect ratepayers. Unjustly enabling the bespoke terms and conditions of PJM's RMR arrangements, PJM currently lacks a pro forma agreement to define the baseline for RMR arrangements – a noted deficiency in the PJM RMR regime which warrants FERC consideration in ruling on RMR arrangements in the PJM footprint. PJM has only recently undertaken to engage a stakeholder process to address the lack of a pro forma RMR arrangement, but the results of that stakeholder process may not be timely and certainly were not timely for either the IR4 or the Talen RMR units' proceedings.

[27] The May 1st Order fails to address at all or addresses in error many of the points raised in the subsequent portions of this request for rehearing. These points were raised by MPC in its answer in ER24-1787 et al., dated March 13, 2025, but were not discussed or acknowledged or responded to in the May 1st Order.

[28] Unit Maximum Monthly Adder x number of months in the rate year) x (Achieved MWh for such Unit/Dispatched MWh for such unit).

[29] *Id.* Note also that PJM dispatch, presumably adding to the denominator in the equation for determining the Performance Adder, is expressly subject to the following limitation under the CORS: "PJM shall not issue a scheduling or dispatch notice to [the Power Plant] for operation of a Unit during periods when

In contrast, under the IR4 arrangement, the performance penalty would be assessed at $150/MWh for undelivered but requested dispatched output within IR4's operating parameters during "Emergencies" up to an annual maximum of $4 million (or approximately 8 percent of the IR4 AFRR). And unlike the Talen contested settlement CORS, the IR4 arrangement contains no exemption for an event of force majeure; rather, the penalty is directly assessed for failure of IR4 to respond during PJM emergencies. IR4 thus provides significant customer benefits compared to the Power Plants' CORS, where the non-performance metric triggering the penalty is diluted through the exclusion of the Power Plants' noticed outages and force majeure events, and measured, after reduction for these exclusions, across all hours of dispatch by PJM.[30]

Continued Operations Rate Schedules. The Talen CORS also provide uniquely for a separate enabling procedure for recovery of regulatory and administrative expense related to Talen's pursuit of RMR arrangements for the Power Plants, in the event that these expenses exceed $7.5 million (in aggregate—but broken out into separate amounts for each of the Power Plants which add up to $7.5 million).[31] The contested settlement includes provision for recovery by Talen of regulatory and administrative expenses of up

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such Unit is unavailable due to an Outage, provided that [the Power Plant] shall notify PJM of Unit Outages consistent with PJM Governing Documents." CORs, 3.3(d). A fair reading of this provision coupled with the method for calculating the Performance Adder, is that if Talen provides notice of an outage, it can escape any reduction to the performance adder for non-performance, rendering the performance adder largely illusory.

30 NRG Power Marketing LLC, NRG Business Marketing LLC, FERC Docket Nos. 22-1539, ER23-2688, Compliance Filing of Tariff Records to Implement Settlement Rates (Feb. 18, 2025), Attachment B.

[31] Talen Settlement Offer, Stipulation and Agreement (Jan. 27, 2025), sec. 4.4.

to $7.5 million, during the first year of the RMR term, in addition to the AFRR recovery of $180 million.[32] Monies Talen seeks under this provision, if awarded, would be additional to the contested settlement AFRR.[33] No such provision is present in the IR4 RMR arrangement terms and conditions.

None of these costs have been assessed or compared to the $83 million per year in excess compensation relative to the FERC trial staff's cost of service determination. Nowhere in the contested settlement or in the May 1st Order is there a cost-benefit analysis based on substantial evidence, as required by *Trailblazer* Approach 2, to support how the various terms of the CORs offset the excessive level of compensation confirmed by the contested settlement.

. The May 1st Order finds that the contested settlement's provision for "administrative" inclusion of the Power Plants in the supply stack for future base residual auctions to be conducted by PJM[34] is a relevant offsetting factor. That is incorrect because the credits are both deficient and illusory, for several reasons. *First*, the revenue

32 CORS, section 5.4 (f) (common provision for both the Brandon Shores and Wagner CORS) provides: "In the first Rate Year, [Power Plant] may include recovery of up to $4,800,000 [for Brandon Shores - $2,700,000 for Wagner] in regulatory and administrative costs....."

33 In a remarkable pivot from ordinary language usage, Talen describes the $7.5 million amount (combined amount for both Brandon Shores and Wagner) for recovery of regulatory and administrative costs as a "cap" benefitting ratepayers. Talen Cover Letter (Jan. 27, 2025) at 6. The CORS, sec. 5.4(f) provides for recovery in the first year of the RMR term of these amounts up to $7.5 million in total (but divided into separate amounts for each Power Plants which cumulate to the $7.5 million) in addition to the AFRR for that year and then the Stipulation and Agreement, sec. 4.4, expressly provides for a procedure for seeking greater recovery of these expenses if asserted to have been incurred by Talen in excess of the so-called "cap(s)" of this expense related to an individual Power Plant.

34 Talen Settlement Offer (Jan. 27, 2025), Stipulation and Agreement, Sec. 4.8, Administrative Inclusion of Capacity in PJM Markets.

crediting resulting from supply stack inclusion would only apply to future capacity market delivery years, beginning June 1, 2026, and not to the first year (June 1, 2025 to May 31, 2026) during which the Power Plants' RMR arrangement will first come into effect. As a result, such revenue crediting would not mitigate the ratepayer impact of the excess compensation resulting from the contested settlement—about $83 million—during the first year of the RMR arrangement.

Second, the revenue crediting (after the first year) has been largely rendered moot by the subsequent Commission acceptance and approval of PJM's filing under section 205 of the FPA in FERC docket ER25-682. [35] As now approved by the Commission, generating resources operating under RMR arrangements in the PJM footprint will be included in the supply stack offered into the next two BRAs, and there are provisions for crediting—to the ratepayers who are obligated to pay the costs of RMR arrangements—the capacity market revenues attributed to the RMR resource, while relieving the RMR resources of the capacity market performance incentives and penalties. This will occur without regard to the contested settlement's provision addressing this matter.

STATEMENT OF ISSUES

This request for rehearing presents the following issues:

1. Whether the Commission properly found as just and reasonable a level of compensation paid to Talen that is nearly double the record evidence of the

[35] *PJM Interconnection LLC*, Order Accepting Tariff Revisions Subject to Condition, 190 FERC ¶ 61,088 (Feb. 14, 2025).

cost of service of the Power Plants properly determined under Commission precedent and lawfully approved the contested settlement, under *Trailblazer* Approach 2.

2. Whether Talen, by filing for cost-of-service treatment for the Power Plants under PJM OATT, Part V, sec. 119, in return for providing PJM OATT Part V service, is foreclosed from receiving compensation that materially exceeds the cost of service of the Power Plants as established by the record evidence.
3. Whether Talen, by filing for cost-of-service treatment for the Power Plants under the provisions of PJM OATT, Part V, section 119, is foreclosed from shutting down the Power Plants, provided Talen is compensated for the cost of service of the Power Plants.
4. Whether the Commission properly considered and balanced the various components of the contested settlement to conclude that the overall result is just and reasonable as required by the Federal Power Act.
5. Whether the Commission properly followed *Trailblazer* Approach 2 in approving the contested settlement.
6. Whether the Commission's May 1st Order is arbitrary and capricious for (a) failing to adequately address the vast discrepancy between the cost-of-service in the record and the settlement amount, and (b) failing to acknowledge or address MPC's motion for leave to file answer and answer to the contested settlement, by pleading dated March 13, 2025.

7. Whether the Commission's May 1st Order lacks substantial evidence because it failed to conduct an analysis of the non-price terms, comparing those terms to the excess payments beyond the cost-of-service in the record.

CONCLUSION

The Commission cannot approve the contested settlement under its *Trailblazer* Approach 2 framework for decision. The contested settlement incorporates a payment to Talen that is nearly double the cost-of-service established under the Commission's long-standing cost-of-service precedent. The purported consideration for this excess payment—keeping the plant running—is contradicted by Talen's actions in filing for and committing to provide "cost of service" Part V Service consistent with the PJM OATT. Moreover, the contested settlement inherently violates the just and reasonable mandate of the Federal Power Act. The level of payment in excess of cost of service overwhelms the offsetting benefits which the non-rate terms and conditions of the contested settlement would purport to afford. For these reasons and those provided above, the Maryland Office of People's Counsel respectfully requests that the Commission grant this request for rehearing of the May 1st Order.

Respectfully submitted,

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Dated: May 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Baltimore, Maryland, this 30th day of May, 2025.

/ss/_____

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