

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

H.A. Wagner LLC	)	Docket No. ER24-1787-001
	)	
Brandon Shores LLC	)	Docket No. ER24-1790-001
	)	(not consolidated)

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER  
OF THE MARYLAND OFFICE OF PEOPLE’S COUNSEL  
TO CONTESTED JOINT OFFERS OF SETTLEMENT**

Pursuant to Rules 213<sup>1</sup> and 602<sup>2</sup> of the Rules and Regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), the Maryland Office of People’s Counsel (“OPC”) submits this motion for leave to file answer and its answer in response to (i) the Joint Settlement Offers (“JSOs”), dated January 27, 2025, filed with the Commission by affiliates of Talen Energy Corporation (“TEC”)<sup>3</sup> and (ii) the Reply Comments of the Commission’s Trial Staff and of Talen, respectively, each dated February 26, 2025.<sup>4</sup>

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<sup>1</sup> 18 C.F.R. § 385.213. Rule 213(a)(2) expressly prohibits, absent an enabling order of the decisional authority, an answer to a “protest, an answer, a motion for oral argument or a request for rehearing”. Rule 213(a)(3), in turn, provides that “[a]n answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.” This answer is directed at matters than those subject to the direct prohibition on answers contained in paragraph (a)(2). Out of an abundance of caution, OPC nevertheless moves for its acceptance.

<sup>2</sup> 18 C.F.R. § 385.602.

<sup>3</sup> TEC, collectively with Brandon Shores LLC and H.A. Wagner LLC, each of the latter respectively an affiliate of TEC, are referred to below as Talen.

<sup>4</sup> FERC Trial Staff’s Reply Comments are referred to below as “FTS Reply”; Talen’s Reply Comments are referred to as “Talen Reply”.

The Commission must determine under its *Trailblazer* decisional framework whether to grant approval of the JSOs.<sup>5</sup> As stated in the initial comments of OPC and Monitoring Analytics LLC, the Independent Market Monitor (“IMM”) for PJM Interconnection LLC (“PJM”) and further demonstrated in this Answer, the JSOs do not satisfy the Commission’s standard for approval under the *Trailblazer* framework for approval of contested settlements. Most notably and as further documented by the Trial Staff’s Reply Comments, approval of the JSOs would result in the provision of PJM’s Open Access Transmission Tariff (“OATT”), Part V Reliability Service at rates that far exceed—by 86 percent or \$83 million annually—the cost of service of the Brandon Shores and Wagner power plants (the “Power Plants”). This is notwithstanding that Talen elected to file for “cost of service” compensation under PJM OATT, Part V, sec. 119. Moreover, the record lacks substantial evidence to support anything close to the level of compensation required by the JSOs. Put simply, the JSOs cannot be approved under the Commission’s *Trailblazer* decisional framework because they violate the Federal Power Act’s (“FPA’s”) legal mandate that electric rates, agreements, and practices must be just and reasonable.

## **BACKGROUND**

This proceeding concerns the arrangements for the operation of the Power Plants pursuant to the PJM OATT<sup>6</sup> for a proposed effective date of June 1, 2025. Talen filed for

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<sup>5</sup> *Trailblazer Pipeline*, 85 FERC ¶ 61,345 (1998), *order on reh’g*, 87 FERC ¶ 61,110 (1999).

<sup>6</sup> OATT, Part V, sections 113-119. Part V reliability service is sometimes referred to as the provision of “reliability must-run” or “RMR” service under an “RMR arrangement.”

RMR arrangements for the Power Plants pursuant to the PJM OATT on April 18, 2024 (the “Talen Initial Filings”), electing to receive compensation pursuant to OATT, Part V, sec. 119.<sup>7</sup> The Commission issued an initial order, dated June 17, 2024, accepting the Talen Initial Filings subject to refund, finding them not proven to be just and reasonable under the FPA and setting the matter for evidentiary hearing, subject to a predicate settlement phase conducted before an administrative law judge (the “Settlement ALJ”) designated by the Commission.<sup>8</sup> Talen filed the JSOs seeking their approval by the Commission. The Settlement ALJ recently issued a report of contested settlement to the Commission describing the JSOs and the accompanying record and, based on the Settlement ALJ’s report, the Chief ALJ terminated the settlement judge procedures for the proceeding.<sup>9</sup>

The previously submitted oppositions of OPC and Monitoring Analytics LLC, the independent market monitor for PJM (the “IMM”) to the JSOs<sup>10</sup> and the report to the Commission by the Settlement ALJ establish that the JSOs comprise a contested settlement.

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<sup>7</sup> OATT, Part V, section 119 provides, in relevant part, that “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....”

<sup>8</sup> *H.A. Wagner LLC and Brandon Shores LLC*, 187 FERC ¶ 61,176 (2024).

<sup>9</sup> *H.A. Wagner LLC and Brandon Shores LLC*, 190 FERC ¶ 63,022 (Mar. 10, 2025) (report of contested settlement); Final Report of Settlement Judge, Dockets ER24-1787-000 et al., (March 11, 2025).

<sup>10</sup> See OPC, Protest and Comments (Feb. 18, 2025) (the “OPC Comments”) and IMM, Comments (Feb. 18, 2025) (the “IMM Comments”) (when referred to collectively below, the “OPC/IMM Comments”).

## ARGUMENT

### **I. The Commission should accept this answer for good cause shown.**

Good cause exists for the Commission's acceptance of this answer to prior pleadings because it will aid the Commission in better understanding the issues in the proceeding, provide additional information to assist the Commission's decision-making and help to ensure a complete and accurate record in the proceeding.<sup>11</sup>

### **II. The JSOs do not satisfy the Commission's *Trailblazer* decisional framework for approval of contested settlements.**

#### **A. The Commission may not approve the JSOs under the *Trailblazer* Approach 1.**

As discussed in both the OPC and IMM comments, only the first two *Trailblazer* Approaches are arguably applicable for review and approval of the JSOs. Under the *Trailblazer* Approach 1, FERC must determine the merits of each contested issue, and there must be an adequate record to support the Commission's determinations.<sup>12</sup> According to the Commission: "[Approach 1] is appropriate when the issues are

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<sup>11</sup> See, e.g., *N.Y. State Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137, at 29 (2017) ("We will accept the Companies' and the Complainants' answers because they have provided information that assisted us in our decision-making process."); *Colonial Pipeline Co.*, 157 FERC ¶ 61,173, at P23 (2016) ("In the instant case, the Commission will accept the Protestors' Answers and Colonial's Answer because they have provided information that assisted us in our decision-making process."); *Minonk Stewardship Wind*, 176 FERC ¶ 61,135, at P 40 (2021); *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,018, at P 15 (2013) (accepting answer that assisted in the decision-making process); *Texas Eastern Transmission, LP*, 122 FERC ¶ 61,205, at P 8 (2008) (accepting answer that completed the record); *California Independent System Operator Corp.*, 105 FERC ¶ 61,284, at P 10 (2003) (accepting answer that clarified the issues).

<sup>12</sup> The discussion herein regarding *Trailblazer* Approach 1 corrects and clarifies OPC's position regarding this Approach contained in the OPC Comments.

primarily policy issues or when the parties have agreed that the record is sufficient to decide the issues on the merits.” However, “the Commission cannot approve a contested settlement under Approach 1 if some of the contesting party’s positions are found to have merit or the record lacks sufficient evidence to support a finding on the merits.”<sup>13</sup>

The JSOs cannot be approved under *Trailblazer* Approach 1. Talen anchors the level of compensation in the JSOs by reference to the initial filings for RMR arrangements for the Power Plants. Talen describes the JSOs proposed level of compensation as “reasonable” because there is a slight discount from the annual fixed revenue requirement (“AFRR”) sought in Talen’s Initial Filings. In Talen’s Initial Filings, 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)<sup>14</sup> plus additional levels of compensation for the Power Plants based on an alleged opportunity cost of development of the Power Plants’ site. As discussed in the OPC and IMM Comments, both arguments are contrary to clear Commission precedent. They 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

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<sup>13</sup> *ISO-NE, Inc. Participating Transmission Owners Administrative Committee*, 167 FERC ¶ 61,164 (2019) (hereafter “ISO-NE PTOAC”) at 21.

<sup>14</sup> See, Talen Initial Filing, ER24-1790, Exhibit No, BSH-001(prepared testimony of T. Schatzki) at 18.

plant's rate base – some 72% less than the value asserted by Talen).<sup>15</sup> Contrary to Commission's cost of service precedent, they also invent 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.<sup>16</sup>

**B. The JSOs also fail to satisfy the requirements for approval under the Trailblazer Approach 2 because they inflate the annual fixed revenue requirement by \$83 million.**

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.””<sup>17</sup> Informing the Commission's *Trailblazer* decisional framework is the D.C.

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<sup>15</sup> See OPC Comments, ER24-1790 et al. (Feb. 18, 2025) at 14-15.

<sup>16</sup> 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 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. OPC intends to litigate these factual issues if the Commission acts favorably on OPC's and IMM's protest of the JSOs and if raised by Talen in a subsequent hearing of these matters.

<sup>17</sup> *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 the Commission to 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.”<sup>18 19</sup>

Here, the AFRR embedded in the JSOs (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 JSOs’ AFRR is \$83 million (or 86%) *in excess* of an appropriate AFRR of approximately \$97 million.

Trial Staff determined the Power Plants’ annual cost of service through the correct use of Commission precedent. Specifically, Trial Staff’s Reply Comments appends 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<sup>[20]</sup> from the cost-of-service models based on Commission precedent and principles using Trial Staff recommended inputs and cost-of-service data provided by Talen [...]

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<sup>18</sup> *Id.* at 22.

<sup>19</sup> *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.”).

<sup>20</sup> AFCC, the Annual Fixed Cost Charge, is the same as the AFRR.

*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.<sup>[21]</sup>

Consistent with the *Laclede Gas Co.* precedent, the excessive level of compensation embedded in the JSOs cannot be supported and is not just and reasonable on its face.

Reports of Talen’s discussion of the JSOs 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 report, for example, that Talen discussed with them that the JSOs’ compensation could deliver \$110 million in annual EBIDTA.<sup>22</sup> 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.

**C. Talen’s threat to abandon RMR service cannot justify inflating the annual cost of service by \$83 million.**

Talen, the other settling parties and FERC Trial Staff (in justifying its lack of objection to the JSOs) point to purported offsetting factors resulting from the JSOs to dilute the adverse impact of the excessive level of compensation embedded in the JSOs. These asserted other factors are not sufficiently described and not supported by record

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<sup>21</sup> FERC Trial Staff Reply Comments (Feb. 26, 2025), Healy Affidavit at PP 16 and 17 (emphasis added).

<sup>22</sup> 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.



evidence and, regardless, are insufficient to render the “package” of components of the JSOs “just and reasonable” as a whole, as it must be, in order to support approval under *Trailblazer* Approach 2.

First, Talen infers that an offsetting benefit of the JSOs is its willingness to enter into RMR arrangements at all. It asserts that, absent approval of the JSOs and approval of anything less than its \$180 million AFRR, Talen will 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 JSOs’ amount of compensation—inflated some 86% in excess of a properly determined cost of service—it will not operate the Power Plants, is inconsistent with its prior election under OATT, section 119 for cost-of-service compensation contained in the Talen Initial Filings.

Rather, Talen’s tying of the excessive charges set forth in the JSOs 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. Talen’s threat makes clear its implication that anything less will lead Talen to shut down the Power Plants and withdraw from the obligation to provide Part V Reliability Service. 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 in the event that the JSOs are not summarily approved—namely, that it cannot operate the Power Plants without “know[ing] the rates, terms and conditions of such service”<sup>23</sup>—is infirm. OPC does not object to the non-rate terms and conditions of the JSOs, and Talen is assured of compensation at just and reasonable levels 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 OPC’s and IMM’s objections. Finally, Talen’s course of action to shut the Power Plants down absent full recovery of the JSOs’ AFRR can be foreclosed by an order issued by the Secretary of the Department of Energy (“DOE”), pursuant to FPA, section 202(c) directing the Power Plants to continue operation given their need for the maintenance of grid reliability.<sup>24</sup>

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<sup>23</sup> See JSOs filing, Talen Cover Letter at 7.

<sup>24</sup> To address this eventuality flowing from Talen’s asserted possible future course of action, OPC 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

In these circumstances, the purported benefit of Talen’s “veto” regarding possible future deployments of the Power Plants is contrary to the public interest and does not offset the unjust and unreasonable levels of compensation sought by the JSOs so as to render the JSOs, as a package, just and reasonable.

**D. Other factors fail to support the \$83 million inflating of the annual cost of service.**

Talen also asserts that there are additional “offsetting” factors to balance against the JSOs’ 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 infirm. Their infirmity 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 showing that they are less beneficial to electric consumers. Unlike the IR4 RMR arrangement, the JSOs must, but do not, provide offsetting benefits by comparison with or commensurate to the documented excess level of compensation represented by the JSOs—exceeding FERC Trial Staff’s documented AFRR by 86 percent—when compared with the possible divergence from cost of service comprised by the black-box settlement

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the issuance of such order. This correspondence is available on the PJM website under the tab for PJM Board communications. OPC 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 JSOs far in excess of their “cost of service.”

revenue requirements effected for the IR4 RMR arrangement.<sup>25</sup> These other factors do not provide commensurate offsetting benefits, nor is there substantial record evidence in this proceeding to support such a conclusion.

Examples of these factors that do not fairly offset the JSOs' excess costs include the performance adder. The JSOs provide 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 condition payment to Talen of the hold-back on application of the formula: Unit Maximum Monthly Adder x number of months in the rate year) x (Achieved MWh for such Unit/Dispatched MWh for such unit).<sup>26</sup> Note, however, Dispatched MWh is reduced by energy "requested where [in relevant part] (1) the Unit was unable to perform due to an event of Force Majeure...."<sup>27</sup>

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<sup>25</sup> In citing to the IR4 RMR arrangement as a parameter for evaluating the JSOs, OPC 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 JSOs' CORS, particularly when anchored to the substantial record and unique evidence of the JSOs' 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.

<sup>26</sup> See CORS, sec. 5.1(c).

<sup>27</sup> *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 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

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 approx. 8% of the IR4 AFRR). And unlike the Talen JSOs' 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, as opposed 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.<sup>28</sup>

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). JSOs, Stipulation and Agreement (Jan. 27, 2025), sec. 4.4. The JSOs include recovery by Talen of regulatory and administrative expenses of up to \$7.5 million, during the first year of the RMR term, in addition to the AFRR recovery of \$180 million.<sup>29</sup> Monies sought under this provision by Talen, if awarded, would be additional

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outage, it can escape any reduction to the performance adder for non-performance, rendering the performance adder largely illusory.

<sup>28</sup> 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.

<sup>29</sup> 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....."

to the JSOs AFRR.<sup>30</sup> No such provision is present in the IR4 RMR arrangement terms and conditions.

Nowhere in the JSOs and supporting filings 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 sought by Talen in the JSOs.

Finally, Talen asserts that its proposal for “administrative” inclusion of the Power Plants in the supply stack for future base residual auctions to be conducted by PJM<sup>31</sup> is a relevant offsetting factor; but this proposal is deficient or illusory for at least three reasons. *First*, the revenue 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 JSOs during this first year of the RMR arrangement.

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<sup>30</sup> 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.

<sup>31</sup> JSOs, Stipulation and Agreement, Sec. 4.8, Administrative Inclusion of Capacity in PJM Markets.

*Second*, it 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.<sup>32</sup> 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 will be 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 incentive/penalty regime. This will occur without regard to the JSOs provision addressing this matter.

*Third*, Talen’s proposal, if implemented, would have created an anti-competitive reservation price at the JSOs’ level of compensation. The reservation price mechanism in the JSOs would allow generation owners to reap the benefit of the market power created by the PJM’s determination that the Power Plants are needed to meet reliability criteria and would minimize the impact of the inclusion of the Power Plants on the overall supply-demand balance and, therefore, the level of clearing price.

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<sup>32</sup> *PJM Interconnection LLC*, Order Accepting Tariff Revisions Subject to Condition, 190 FERC ¶ 61,088 (Feb. 14, 2025).

## CONCLUSION

The JSOs do not satisfy the Commission’s standard for approval under the *Trailblazer* framework for approval of contested settlements. The JSOs entail the provision of PJM OATT, Part V Reliability Service for an AFRR of \$180 million—a rate that exceeds by 86 percent the cost of service of the Power Plants, determined by Trial Staff to be \$97 million. Talen elected to file for “cost of service” compensation under PJM OATT, Part V, sec. 119, and should be compensated at a just and reasonable rate and no more. Other factors contained in the JSOs do not offset the excess level of compensation sought in the JSOs to render the JSOs as a package just and reasonable. Accordingly, the Commission should set for hearing the determination of the compensation to be paid to Talen pursuant to the RMR arrangements applicable to the Power Plants.



Respectfully submitted,

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March 13, 2025

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 13th day of March, 2025 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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March 13, 2025