UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Brandon Shores LLC	)	Docket No. ER24-1787-000
H.A. Wagner LLC	)	Docket No. ER24-1790-000
	)	(not consolidated)

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission's Rules and Regulations, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"), submits these comments on the Rate Schedules submitted by Brandon Shores LLC ("Brandon Shores") and by H.A. Wagner LLC ("Wagner") on April 18, 2024 ("Part V Filings"). Brandon Shores and Wagner are indirect wholly owned subsidiaries of Talen Energy Corporation ("Talen"), and are referred to collectively as the "Talen Entities." The Talen Entities have filed for rates pursuant to Part V, Section 119, of the OATT ("Part V"), to provide Part V service related to the deactivation requests from the Brandon Shores Generating Station Units 1 and 2 ("Brandon Shores Facility") and the H.A. Wagner Generating Station Units Nos. 3 and 4 ("Wagner Facility") (collectively, "Facilities"). The Market Monitor appreciates the Talen Entities' willingness to provide Part V service, consistent with good utility practice and the Talen Entities' and PJM's reliability obligations. The Talen Entities have not, however, proposed just and reasonable compensation for that service and the filings should be rejected. The Talen Entities should be directed to provide the Part V service at a compensation level pursuant to and consistent with Part V of the OATT.

The Talen Entities' filing does not meet the standard that Part V establishes for PJM generation owners seeking recovery of Part V service costs directly from the Commission.

Part V, Section 119, provides that generation owners "may file with the Commission a cost of service rate to recover the entire cost of *operating* the generating unit until such time as the generating unit is deactivated" (emphasis added).[1] The Talen Entities have instead filed what they assert to be traditional utilities' cost of service rate (rate base rate of return) filings, pursuant to Section 205 of the Federal Power Act.[2]

As part of the fictional rate case filing, the Talen Entities request a return on and of investments in Brandon Shores and Wagner power plants which is included in what they term their rate base. The Talen Entities do not have a rate base nor are they entitled to regulatory treatment as if they were a rate base rate of return regulated utility. The Talen Entities are not entitled to recovery on and of the sunk costs in the Facilities. Such revenues are not part of the cost of operating the unit to provide Part V service. In addition, the Talen Entities propose to include a return on and of the part of the sunk costs that have previously been written off by Talen, also referred to as impaired assets. Impaired assets are assets with reduced value based on the Talen Entities' prior determination that the market value was less than book value and for which Talen treated the write down as a loss. Talen Entities propose to ignore their own write down of the value and to recover that written down value from PJM customers.[3] Talen recognized in its Consolidated Financial Statements that the value of the Brandon Shores Facility was impaired based on market conditions and should be written down.[4] The Talen Entities are asking PJM customers to make investors whole for these losses

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1 OATT § 119.

2 Brandon Shores Part V filing at 11, Wagner Part V filing at 10.

3 *See* Talen Energy Corporation Consolidated Financial Statements for the Year Ended December 31, 2023 at <*https://talenenergy.investorroom.com/financials-presentations*> at 44 & 53.

4 *See id*. at 44.

they incurred in the PJM markets. Such make whole payments are not provided for in Part V.

The Talen Entities are pursuing windfalls in these filings based on PJM's need for reliability in the areas that require that the Facilities remain in service. PJM's identified need for these resources to ensure the reliability of the grid confers market power on the Talen Entities. The Brandon Shores Facility is needed for five years longer than the June 1, 2025, date which Brandon Shores specified on April 6, 2023, as its desired retirement date.[5] Likewise, the Wagner Facilities are needed for approximately three years longer than the June 1, 2025, date which Wagner specified on October 16, 2023, as its desired retirement date.[6] The purpose of the Part V tariff provisions is to ensure that generation owners' costs are covered and that customers are protected from the exercise of market power. The purpose of Part V is not to facilitate the exercise of market power.

No fact finding hearing is required in order for the Commission to reject the Talen Entities' filing based on its filed approach. If the Talen Entities choose to file new proposals following a just and reasonable cost recovery approach, a hearing to review that approach would be appropriate.

I. COMMENTS

A. The Talen Entities' Filing is Not Consistent with Regulation Through Competition and Part V of the OATT.

PJM ensures reliability at least cost through a regulatory regime based on competitive markets. In a competitive market, suppliers bear the risks associated with their assets and receive market revenues for their assets. This is in contrast to the traditional rate base rate of return regulatory regime, which was replaced by markets. Under the rate base rate of return approach, generation owners earn a return on their investments over the life of the

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[5] Brandon Shores Part V filing, Attachment C.

[6] Wagner Part V filing, Attachment C.

investments. In markets, generation owners earn a return on their investments that is a function of market prices and demand. Section 119 provides for filing "a cost of service rate to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated" for Part V service, but it neither requires nor permits a traditional rate base rate of return rate case approach.

The goal of payments for Part V service is to ensure that the generation owner recovers the costs of operating the unit while it remains in service in order to help ensure the reliability of the system, while protecting customers against the market power created by this reliability requirement. Part V service was not designed to permit asset owners to receive a windfall which was not available in the market or to reverse losses incurred in the market.

Generation owners should receive just and reasonable compensation for providing Part V service, as is provided for under the OATT. When PJM requires Part V service, the generation owner recovers all costs associated with providing Part V service.

Talen has acted consistent with its responsibilities in agreeing to provide Part V service. This is not a reason to overlook the market power that Talen possesses in these circumstances. PJM has no alternative to keeping these units in service until it has implemented the transmission upgrades necessary to accommodate the proposed retirements. Any real or perceived ability for a generation owner to decide not to provide Part V service does not mean that PJM should be forced to acquire Part V service on unjust and unreasonable terms.

The Talen Entities should receive full compensation for all of the costs it incurs to operate to provide Part V service, plus a reasonable incentive, but no more.

Although the Talen Entities filed Part V Rate Schedules for the Facilities under Part 35 of the Commission's regulations, the service described in this rate schedule is distinct from

typical electric service (e.g., energy sales).[7] The Facilities' normal service ended when the Talen Entities decided to retire them.

Part V service does not reverse the Talen Entities' retirement decisions. It accommodates those decisions. The limited service to be provided under the Part V Rate Schedule comes within the framework of the PJM market rules and under the FERC approved PJM regulatory framework. Part V service does not reverse history and reestablish a defunct rate base rate of return regulatory paradigm applicable only to the Facilities. Part V service is not typical electric service (e.g., energy sales). Part V service is not an opportunity to exercise market power, to reverse market outcomes or a new profit opportunity. Part V service is a limited reliability service that addresses locational reliability issues. The Talen Entities propose to include costs for items that exceed what is necessary to provide Part V service. The Part V filings should be evaluated solely on the basis of the requirements and purposes of Section 119 and the Part V of the OATT. The design of Sections 114–115 is indicative of the purpose and function of the whole of Part V.

Section 119 of Part V provides for recovery of "the entire cost of operating the generating unit" for the limited and defined need determined by PJM. Section 119 provides an opportunity for a unit to provide Part V service when an owner determines that the formula rate provisions in Sections 114–115 are not adequate for its circumstances. Limitations on total new capital investment permitted are one such limitation. The level of capital investment anticipated by each Facility exceeds the maximum level under Sections 114–115. Due to the limitations of Sections 114–115, it is reasonable for the Talen Entities to elect to file a rate "to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated" under Section 119.

But it is unjust and unreasonable for the Talen Entities to submit their Part V filings based on the assertion that Section 119 allows for an entirely different theory of recoverable

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[7] *See* 18 CFR Part 35.

costs than is allowed under the parallel and alternative provision in Sections 114–115. Sections 119 and 114–115 are intended to serve the same purpose, and these provisions should be interpreted and applied consistently.

Part V service is considered voluntary in PJM.[8] But Part V agreements should not reverse an owner's losses in competitive markets. A generation owner following the PJM rules is not permitted to exploit the need from Part V service to extract a windfall.

The regulatory paradigm based on competition should continue to apply to competitive assets needed for an additional period of Part V service. Allowing suppliers to change the applicable regulatory paradigm whenever it serves suppliers' interests deprives the public of some or all of the benefits of either regulatory approach.

B. The Talen Entities Misrepresent the *GenOn* Case.

Talen Entities cite, as precedent for its position that they are not limited to going forward costs, to the order approving a settlement in the *GenOn* Part V case.[9] The settlement was approved as a just and reasonable "package" under *Trailblazer*, and did not include findings on the merits for individual issues.[10] *GenOn* stated:

> GenOn has provided the Stewart Affidavit calculating the cost-of-service recovery rate with no return of, or return on, net plant and determined that this would result in a cost-of-service recovery rate of $12,540,098.[footnote omitted] Market Monitor contends that

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8 *See* OATT § 113.1. The voluntary basis for provided Part V service is limited. The Market Monitor does not agree with Brandon Shore' assertion (at 5) and Wagner's assertion (at 5) of an "unconditional right to deactivate units." Generating units are public utilities, and have reliability obligations and other obligations associated with that status. *See* OA Schedule 1 § 1.7.4(a). Generating units generally are not permitted to intentionally exercise market power. *See* 18 CFR § 1c.2.

9 Brandon Shores Part V filing at 8, Wagner Part V filing at 7, citing *GenOn Power Midwest, LP*, 149 FERC ¶ 61,218 at P 34 (2014). Brandon Shores at 9 and Wagner at 8 also cite to the order approving an RMR rate schedule for RC Cape May, LLC, but this matter was resolved in an order approving the settlement that does not establish precedent, and so is not properly relied upon to resolve any issue raised here. *See RC Cape May Holdings, LLC*, 162 FERC ¶ 61,194 (2018).

10 *See* 149 FERC ¶ 61,218 at P 33.

> even if the cost-of-service recovery rate of $12,540,098 is correct, the settlement rate of $13,200,000 still exceeds the maximum value allowed by the cost-of-service recovery rate provision of the PJM Tariff.[11]

The rate was approved in *GenOn* partly on a determination that the level of the approved rate did not significantly exceed the level of a rate excluding all but going forward costs.[12] *GenOn* supports the Market Monitor's position on what, overall, constitutes a just and reasonable rate under Part V.

The *GenOn* order explained that a unit providing Part V can file a rate under Section 119, and is not required to use the formula rates under Sections 114–115.[13] The Market Monitor did not argue in the *GenOn* case and does not argue here that a unit owner must use the formula rates under Sections 114–115 and cannot file a rate under Section 119. Part V offers a choice between Sections 114–115 and Section 119. But Part V is not properly interpreted to offer a choice of entirely different regulatory paradigms. It should not be a matter in dispute that Section 119 is properly interpreted consistent with the nature and purpose of Part V service under Part V of the OATT.

C. The Talen Entities Misunderstand the *Mystic* Case.

The Talen Entities assert that the Part V Filings should be evaluated based on recent orders issued in the *Constellation Mystic Power* case.[14] Reliance on the *Mystic* case is misplaced. The *Mystic* case was not decided within the framework of the PJM market rules. The case was

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11 *Id*.

12 *Id*. at P 34.

13 *Id*.

14 *See* Brandon Shores Part V Filing at 14–15, Wagner Part V filing at 12–13, citing *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018) ("*Mystic*"), order on clarification, 172 FERC ¶ 61,044 (2020).

not initiated under the ISO-NE market rules. The service provided by the *Mystic* units is not the service provided by the Facilities.

The *Mystic* case involved whether certain units located in New England should receive subsidies in order to address fuel supply conditions unique to New England.[15] As a result of flawed capacity market rules, the *Mystic* units, which were proposed to be "de-listed" under the ISO-NE capacity market rules, were determined to be needed to ensure resource adequacy.[16] The units filed for cost of service rates under Section 205 of the Federal Power Act, outside of the then existing ISO-NE market rules.[17] Interim rules for ISO-NE were filed and applied subsequently.[18]

In approving interim rules in connection with the *Mystic* case, the Commission noted: "…fuel security resources may not necessarily need to be treated the same way in the FCM as reliability resources due to potentially 'material differences' between cost-of-service agreements for local reliability needs and regional fuel security concerns."[19] In his dissent, Commission Chatterjee emphasized that "Part V resources are distinguishable from resources retained for fuel security." Part V resources are needed "to address local reliability needs" while transmission upgrades are made. Resources retained for fuel security "are intended to address regional fuel security issues that may be more difficult to solve."

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15 *See id*.

16 *See id.* at PP 7–8.

17 *See id.* at P 10.

18 *See ISO New England, Inc*., 165 FERC ¶ 61,202 (2018).

19 *See id.* at P 86.

The Commission addressed the differences between fuel security and Part V resources in the July 2 Order and recognized that there are material differences between cost of service agreements for local reliability needs and regional fuel security concerns.[20]

The issue in *Mystic* was whether the precedent providing that Part V generators could offer as price takers in the ISO-NE capacity market should be extended to the *Mystic* fuel security generators.[21] On that limited issue, the Commission approved the inclusion of fuel security generators in the ISO-NE capacity market as price takers.[22]

The issue of allowing the fuel security units to participate as price takers in the ISO-NE capacity market is not relevant to the Facilities. Under the Part V Rate Schedule, the Facilities are not expected to participate in the PJM Capacity Market and provide capacity to PJM.

The Facilities Part V service is fully distinguishable in law and fact from the *Mystic* case, and *Mystic* is not properly relied upon to support any aspect of the Part V filings.

D. The Talen Entities Would Require Customers to Pay for Sunk Costs

The Talen Entities include in their requested fixed monthly payment a return on and a return of the investment in the Facilities that has zero market value. Customers should be required to make investors whole for their losses. The return on and of the sunk costs in the Facilities should be set to zero.

The annual revenue that Talen wants customers to pay for the sunk costs of Brandon Shores is $104,858,130 per year, or $225.67 per MW-day. The annual revenue that Talen wants customers to pay for the sunk costs of Wagner is $14,143,638, or $55.20 per MW-day.

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20 *Id*.

21 *See id*. at P 85, citing *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116 (2015), *order on reh'g & compliance*, 155 FERC ¶ 61,076 (2016), *order on reh'g & compliance*, 161 FERC P 61,189 (2017).

22 See id.

E. Talen Entities Would Require Customers to Pay for Estimated Costs without Review

All of the costs recoverable for providing this Part V service should be subject to review and true up, regardless of whether they are higher or lower than the initial estimates. That is the only way to ensure that both the Talen Entities and the customers are treated fairly.

But the Talen Entities have proposed to collect costs through a fixed monthly payment without provision for checking or a true up to actuals. For example, fixed operation and maintenance expenses make up 37.6 percent of the total fixed monthly payments in Brandon Shores' proposal and 63.9 percent of the total fixed monthly payments in Wagner's proposal. All the costs should be subject to review and true up.

Talen claims an adjustment based on the alleged "reflecting the delay in the opportunity to sell (or develop) the Brandon Shores and Wagner site due to continued operation of the units."[23] The alleged opportunity cost is speculative and should be rejected.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this protest as the Commission resolves the issues raised in these proceedings.

Respectfully submitted,

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[23] Brandon Shores Part V Filing at 16–18; Wagner Part V Filing at 13–15.

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Dated: May 16, 2024

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 Eagleville, Pennsylvania,
this 16th day of May, 2024.

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