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)

ANSWER AND MOTION FOR LEAVE TO ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),[2] submits this answer to the reply comments submitted in this proceeding on February 26, 2025, to the Market Monitor's comments in this proceeding filed, February 18, 2025, opposing the offers of settlement filed in this proceeding on January 27, 2025 ("Offers").[3] Nothing in the reply comments supports approval of the settlement under *Trailblazer*.[4] The reply comments rely heavily on

---

1 18 CFR §§ 385.212 & 385.213 (2024).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

3 Reply comments were filed by Commission Trial Staff ("Staff"); Brandon Shores LLC ("Brandon Shores"), H.A. Wagner LLC ("Wagner"), Southern Maryland Electric Cooperative, Old Dominion Electric Cooperative, and Exelon Corporation ("Brandon Shores et al."); Maryland Public Service Commission ("Maryland PSC").

4 *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082 (1998) (*Trailblazer I*); Trailblazer Pipeline Co., 85 FERC ¶ 61,345 at 62,341 (*Trailblazer II*), *order on reh'g*, 87 FERC ¶ 61,110 (*Trailblazer III*), *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).

mischaracterizing the Market Monitor's opposition as primarily about the sunk cost issue. In fact, the Market Monitor's comments were primarily about the clear reliance of the Offers on unsupported, speculative and outlandish assertions about the asserted book values of the assets. Staff's filing provides strong additional evidence showing that no *Trailblazer* standard is satisfied. The Offers should be rejected.[5]

I. ANSWER

A. Brandon Shores et al. and Maryland PSC Fail to Support Approval of the Settlement.

Brandon Shores et al. and Maryland PSC argue that the settlement should be approved under *Trailblazer*, which provides that a contested settlement may be approved "where the Commission renders a binding merits decision on each of the contested issues … [or] approval of the contested settlement is based on a finding that the overall settlement as a package provides a just and reasonable result."[6] Neither Brandon Shores et al. nor Maryland PSC provide any evidence that could support a finding that the rates for Part V service in the Offers are just and reasonable, whether considered element by element or as a package. They provide no information in their filings that the Commission did not already have when it set this matter for hearing, stating: "Our preliminary analysis indicates that both

---

[5] Rule 602(h)(1)(i) provides that the Commission may decide the merits of contested settlement issues only if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines that there is no genuine issue of material fact. 18 CFR § 602(h)(1)(i).

[6] *See Trailblazer II*, which summarizes (at 61,436 n.5) 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 reply comments argue for approval under Approach No. 1 or Approach No. 2.

the Brandon Shores Rate Schedule and Wagner Rate Schedule have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful."[7]

Neither Brandon Shores et al. nor Maryland PSC respond to the specific issues identified in the protests. The Market Monitor's objections to the Offers are about the facts, or asserted facts, underlying the Offers. There is no record supporting the asserted cost basis of the Offers. There is no showing that the asserted costs included in the Offers reflect the actual costs to be incurred to provide Part V Service. The primary flaw in the Offers is the grossly inflated book value of the assets. In addition, the VOM costs included are only estimates and there is no provision for a true up to actual costs. The overhead costs (A&G) are even more attenuated estimates based on unsupported allocations of total corporate overheads without any defined link to the actual plants at issue. The failure to demonstrate actual costs is aggravated by the failure to include provision for review and verification of costs by the Market Monitor when bills are submitted to PJM. The Offers cannot be found just and reasonable without provisions to ensure accurate billing. That review role is one that has been filled by the Market Monitor and not by PJM.

Brandon Shores et al argue that the Offers are a black box and as a result cannot be contested on the facts. If that were true then no black box settlement could ever be contested on the facts. More importantly, the Offers can be contested on the facts. The basic facts in this matter do demonstrate that the black box result is not reasonable. Brandon Shores and Wagner initially proposed a combined annual revenue requirement of $215,775,999. It is clear from the Staff filing and the Market Monitor filing that the initial filing included elements of plant value that are not consistent with Commission precedent. Removal of those items reduces the value of the initial filing to Staff's combined annual revenue requirement of $97,341,973. The Offers, at a combined annual revenue requirement of $180,000, fall well

---

[7] *H.A. Wagner LLC, Brandon Shores LLC*, 187 FERC ¶ 61,176 at P 56 (2024).

above that reduced value. Therefore, the Offers are based in significant part on approaches to plant value that are not supported and are not consistent with Commission precedent.

Arguments that the fact that the rates included in the Offers are reduced by about 17 percent from the levels initially proposed by Brandon Shores and Wagner shows that the rates in the Offers are just and reasonable are absurd.[8] As any observer of or participant in utility rate cases knows, initial utility rate filings are inflated and are not a standard of reasonableness. The standard approach in those cases is to overstate the requirement and then appear reasonable by agreeing to a lower number. The rates proposed were grossly excessive, and were opposed by many of the parties supporting the Offers. The rates proposed in the Offers remain excessive, as is most recently demonstrated in the record by Staff. The positions of the Staff and the Market Monitor should have been the starting place for a negotiated settlement. The positions of both Staff and the Market Monitor are extremely conservative because they are based on the initial Talen filings modified only by eliminating the unsupported assertions about the book value of the assets, and the unsupported overhead costs identified by the Market Monitor. The Staff number represents what should have been filed initially if Talen had followed normal rate case protocols and followed Commission precedent on plant valuation and asked for every other cost included in that filing. Anything above the level determined by Staff would be excessive, and well outside of the range of what could be approved as a "package" under *Trailblazer*.

B. Staff's Comments Show Why the Settlement Should Be Rejected.

In contrast to the reply comments of Brandon Shores et al. and the Maryland PSC, Staff does provide new and material information. Staff's comments, which include Staff's cost of service analysis, show that the Offers cannot be approved under *Trailblazer*. Staff explains that the Offers exceed what it deems an appropriate cost of service rate by approximately

---

8 *See* Maryland PSC at 2; Brandon Shores et al. at 13–14.

$83,000,000 per year or $332,000,000 for the four year term of the RMR.[9] In other words, in comparison to Staff's assessment, the proposed settlement rates are about 85 percent higher than a correctly calculated rate, which would be approximately $97 million per year.[10]

Staff's calculation is based upon the correct calculation of net book value in a manner consistent with Commission precedent. Staff explicitly disputes and disregards (at 14) the companies' "novel legal theory."

Staff asserts (at 15–17) that certain relatively insignificant non rate provisions to settlement offset the enormous gap between the Offers and a rate correctly calculated under traditional cost of service principles. The record includes no evidence that the non rate settlement provisions can be reasonably valued at anything remotely close to $83,000,000 per year or $332,000,000 for the term of the RMR, or indeed have any value. Staff provides no evidence to support their assertion about the value of non rate provisions.

The provision for crediting capacity market revenues does not offset the excessive compensation proposed in the Offers and is not relevant to evaluating the offers. That provision is another way of saying that Talen will only be paid once. That should go without saying. It adds nothing of value to the agreement. PJM can and will take independent action to ensure the correct modeling of the resources in capacity market auctions.

The rates included in the Offers are far outside of any conceivable range of values that could be approved as a package, and the non rate provisions relief upon by Staff provide no offset.

---

[9] Staff at 12 ("Although established on a black box basis in the Settlement, the combined total AFCC of $180 million for Brandon Shores and Wagner is approximately $83 million higher than Trial Staff's independent assessment of approximately $97 million for both Generators as shown in Table 1, above.[n49: Healy Aff. ¶ 19.] As explained by Mr. Healy, nearly half of the difference between the settled AFCC of the Facilities and Trial Staff's calculation is based on divergent views of the starting net book value for the Generators. [n50: Healy Aff. ¶ 21.]").

[10] *See id.*

Staff also improperly considers threats to withhold Part V service as justification for excessive rates.[11] Acceding to the Company's threats to deactivate a unit deemed by PJM to be needed for reliability is not a basis for approval of a contested settlement under *Trailblazer*. Acceding to such threats and paying excessive rates for Part V Service as a result would be to allow the exercise of the market power.

The Offers should be rejected. Hearing procedures to determine a just and reasonable rate as required under Section 119 of the OATT and the Federal Power Act should resume.

If the Talen Entities refuse to provide Part V service on just and reasonable terms, then PJM can request that the Secretary of the Department of Energy declare an emergency under Section 202(c) of the Federal Power Act.[12] If that course of action becomes necessary, then the provisions of Part V can be set aside, and a just and reasonable rate can be determined under Section 202(c).

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to protests, answers, or requests for rehearing unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer

---

[11] Staff at 8 ("Importantly, the choice in the instant proceeding is not between a settlement and a litigated outcome. Wagner and Brandon Shores have made it clear that they would prefer to simply deactivate the Facilities.[footnote omitted] Given the exigent circumstances likely to prevail in the BGE zone if the Settlement is rejected, there is little doubt that the customers in that zone will be in a far worse position if the Settlement is rejected and the units are deactivated.").

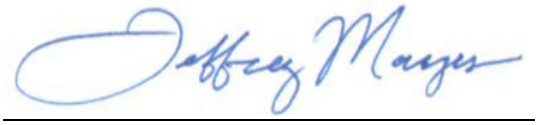
[12] On February 28, 2025, the Maryland Office of People's Counsel sent a letter to PJM Board requesting "that PJM prophylactically request the Secretary of the Department of Energy to issue an order under [FPA § 202(c)], directing Talen Energy Corporation and its two subsidiaries, Brandon Shores LLC and Wagner LLC, … to maintain service after May 31, 2025, should Talen take steps to act upon its threat to cease to operate the Brandon Shores and Wagner power plants," which can be accessed at: <*https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2025/20250228-md-opc-letter-to-pjm-board.pdf*>. Act, 42 U.S.C. § 7151(b), and delegation by email correspondence (Dec. 23, 2022); *E.g.*, Department of Energy, Order No. 202-22-4 (December 24, 2022) (order authorizing generators in PJM to operate above permitting levels in order to avoid energy shortfalls).

clarifies the issues or assists in creating a complete record.[13] In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Gerard F. Cerchio
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

[13] *See, e.g., PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted … decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

(610) 271-8050
gerard.cerchio@monitoringanalytics.com

Dated: March 13, 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 Eagleville, Pennsylvania,
this 13th day of March, 2025.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com