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)

REQUEST FOR REHEARING OF THE
INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 713 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor" or "IMM") for PJM Interconnection, L.L.C. ("PJM")[2] submits this request for rehearing of the order on contested settlement issued in this proceeding May 1, 2025 ("May 1st Order").[3]

The May 1st Order approved a settlement filed in these proceedings ("Settlement") that included rates pursuant to which the Brandon Shores Generating Station Units 1 and 2 ("Brandon Shores") coal fired and Wagner Generating Station Units 3 and 4 ("Wagner"), fuel oil fired generation facilities owned by Talen Energy Corporation ("Talen"), will provide service to PJM under Part V of the PJM OATT ("Part V Service"), also known as Reliability Must Run or RMR service. Part V Service is needed when the owner of a generating unit wants to retire the unit for economic, market based reasons but PJM

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1 18 CFR § 385.713 (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").

3 191 FERC ¶ 61,098.

informs the owner that such retirement creates reliability issues that must be resolved by building transmission. PJM relies on Part V Service to protect system reliability during the period in which transmission upgrades are built to obviate the need for the requested deactivations. Talen requested to deactivate the facilities effective June 1, 2025, but agreed to provide Part V Service for the period ending December 31, 2028.[4]

The May 1st Order approved the Settlement under the second *Trailblazer* approach, explaining that a contested settlement may be approved as a "package" if "the overall result of the settlement is just and reasonable and that the contesting party would be in no worse position under the terms of the settlement than if the case were litigated."[5] The May 1st Order further explained that, under the second *Trailblazer* approach, "the Commission need not find that the settlement rate is exactly the rate the Commission would establish on the merits after litigation," but only that "the overall package, resulting from the give and take of the bargaining which led to the settlement, falls within a broad ambit of various rates which may be just and reasonable."[6]

The May 1st Order attempts to support its finding (at P 29), asserting "numerous benefits," including the reduction of Fixed-Cost Charges and the non-rate terms and conditions relative to Talen's filed Part V rate schedule. The May 1st Order emphasizes (*id*.) that the non-rate provisions provide a "higher degree of certainty to market participants that the units will be available including a longer RMR term, more limited circumstances under which the Generators can terminate operations, along with flexibility for PJM to terminate the agreements if market conditions change." The May 1st Order also noted (*id*.)

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4 *See* May 1st Order at P 6.

5 May 1st Order at P 26, citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *order denying reh'g*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*).

6 *Id*.

"Significant risks in continued litigation" and "the support … of the load-serving entities and parties responsible for providing reliable service."

Trailblazer does not require a finding of "exactly" the rate that would have resulted from litigation, but it still requires a finding on the merits, and, in particular, that the level of the rate is just and reasonable. *Trailblazer* does not provide a basis for approving a contested settlement simply because a subset of the parties agree to it. The May 1st Order lacks the necessary finding on the merits that the level of the Settlement Rates is just and reasonable.

None of the reasons relied on in the May 1st Order explain why the level of the rate approved is just and reasonable, including consideration as a package. Because the Settlement Rates are submitted as black box rates, based on unexplained facts and unsupported by evidence, they cannot be approved over opposition on the merits under *Trailblazer*. The reasons cited in the May 1st Order could apply to a rate at any level.

Reliance on a comparison of the Settlement Rates to the excessive and unsupported rate filed by Talen is unjustified and unreasonable. That logic would support approval of any utility rate less than the rate filed for by the utility. This dynamic is well understood by regulators and the regulated companies and that is why utilities routinely file for excessive rates in their rate cases and settle at a lower level.

No dollar value is assigned to the non-rate terms such that they can be determined to offset the level of the Settlement Rates. The value of non-rate terms has not been established. No comparison to the non-rate terms of other RMR agreements has been made. No comparison to reasonable non-rate terms has been made. As with the actual rates, the fact that a utility files for unreasonable non-rate terms is not evidence that a settlement with better non-rate terms is just and reasonable.

The assumption that rejection of the Settlement would harm reliability is core to the Order. The basis for the assumption that rejection of the rate would harm reliability is not explained. The assumption appears to be that Talen will not provide Part V Service unless it

receives the excessive compensation included in the Settlement. That threat by Talen is an exercise of market power. Compensation based on market power is not just and reasonable.

The May 1st Order refers to support from some load interests, but it does not indicate that those interests believe the level of the rate is just and reasonable. Those load interests argued for rates significantly lower than the Settlement rate. Talen informed the Commission that it would not provide Part V Service if they were not paid the Settlement Rate.[7]

The May 1st Order fails to adequately explain its findings. The May 1st Order recites alleged benefits but does not explain why the benefits have value relative to the extreme cost of Part V Service. The May 1st Order ignores criticism that the alleged benefits have little or no value.[8]

The May 1st Order does not identify any valid cost-based support for the level of the Settlement Rates. The inclusion of a fictional level of sunk costs in Part V Service is inconsistent with regulation through competition, is illogical and fails to reasonably interpret Part V and is inconsistent with Commission precedent on Part V Service.

Rehearing of the May 1st Order should be granted, the contested settlement should be rejected and hearing procedures should be instituted to determine a just and reasonable rate for Part V Service.

I. REQUEST FOR REHEARING

A. The May 1st Order Fails to Determine on the Merits that the Level of the Settlement Rate Is Just and Reasonable, Including as a Package.

The May 1st Order reasonably states that under the *Trailblazer* standard: "The Commission need only find that the overall package, resulting from the give and take of the

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7 *See* Talen, Settlement Transmittal Letter, Docket No. ER24-1787-001, et al. (January 27, 2025) at 7

8 May 1st Order at PP 28–29.

bargaining which led to the settlement, falls within a broad ambit of various rates which may be just and reasonable." The Commission here describes a merits based standard. The point of this standard is that the level of a rate can be within a bandwidth of just and reasonable even if individual components are not evaluated and determined to be just and reasonable.[9] The May 1st Order states (at P 29): "[W]e find that the Settlements provide overall just and reasonable rates and, when considered as a whole, are no worse for the contesting parties than continued litigation, and we therefore approve the Settlements."

The May 1st Order fails to apply *Trailblazer* correctly. The May 1st Order fails to make a determination that rates at the level approved are just and reasonable. While *Trailblazer* does not require a finding that every component of the rate is just and reasonable, it continues to require that the overall result is just and reasonable. *Trailblazer* described a finding on the merits. The May 1st Order fails to make the required finding.

That the Settlement Rates are excessive was demonstrated in the record. Talen's filing was explicitly based on the inclusion of a fictional book value rather than accounting book value. This is not an issue about sunk costs. This is an issue about whether a company can inflate the book value of its assets based on an assertion that they paid too little for the assets. The position of the Commission Staff described in comments on the Settlement offered a strong basis for a negotiated settlement. The position of Commission Staff is extremely conservative because it is based on the initial Talen filings modified only by eliminating the unsupported assertions about the fictional 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

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[9] The Market Monitor agrees that this is a valid reading of the *Trailblazer* cases. The Market Monitor does not agree that the *Trailblazer* package analysis standard correctly applies the just and reasonable standard set forth in Section 205 of the Federal Power Act. 16 U.S.C. § 824d. The Commission has exclusive authority to determine whether rates are just and reasonable and should not defer to the Settling Parties. This Market Monitor states this issue in order to reserve it for potential judicial review.

followed Commission precedent on plant valuation and asked for every other cost included in that filing.[10] Staff's filing fully reflects Commission policy on Part V arrangements in PJM. Staff's approach is the definition of the correctly calculated utility position in this case. Staff's approach should have defined, for the Commission, the high end of the options rather than Talen's actual filing. Under the Market Monitor's approach, Talen would have been fully compensated, received a reasonable incentive and would have been protected from risk. The Settlement Rates are wildly excessive relative the negotiated outcome that could have resulted from a process free of the exercise of market power. The Settlement Rates significantly exceed what results from the framework stated by Talen for an acceptable result when it initiated this proceeding.[11] The Settlement Rates are well outside of the range of a result that could have been approved as a just and reasonable "package" under *Trailblazer*.

The May 1st Order instead relies on a comparison to the filed rate that was inconsistent with Commission policy and inconsistent with basic accounting and economics. Talen purchased the assets in the market at what was therefore the market price. After the fact, Talen created an analysis demonstrating that the value of the asset should have been higher than the actual price of the asset.[12] The first comparison is Talen's initially proposed rate to the Settlement rate. Talen's filed rate has not been examined at hearing. Record evidence disputes the support provided by Talen for the level of the rate. Talen did

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[10] *See* Reply Comments of the Commission Trial Staff on Offer of Settlement, Docket No. ER24-1787-001 et al. (February 26, 2025) at 9–14, Attachment A (Affidavit of Trial Staff Witness Michael B. Healy, et seq.

[11] *See* Transmittal Letter, Docket No. ER24-1787-000, et al. (April 18, 2024) ("Talen will continue to work with the Commission and all stakeholders to keep Brandon and Wagner available to run. But Talen, Brandon Shores, and Wagner should not be asked to do so without fully recovering all costs, the investments needed to maintain the plants, and a fair return of and on equity.").

[12] *See* Talen Part V Service Filing, Docket No. ER25-1787-000, et al. (April 18, 2025) at 10–15.

not provide cost support acceptable under Commission precedent.[13] In particular, the Market Monitor, Maryland OPC and Staff, objected to Talen's reliance on a fictional market value based on a nonexistent transaction.[14]

The impact of Talen's fictional book value was significant, based on record evidence Staff explains that the Settlement rate exceeds what it deems an appropriate cost of service rate by approximately $83,000,000 per year or $332,000,000 for the four year term of the RMR, about half of which is a result of the fictional book value.[15] 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.[16]

Talen clearly filed for a rate significantly above a just and reasonable rate to obtain leverage in settlement negotiations. As any observer of or participant in utility rate cases knows, initial utility rate filings are inflated and do not define a standard of reasonableness. The standard approach in utility rate cases is to overstate the requirement and then appear reasonable by agreeing to a lower number. The rate in Talen's filing is inflated explicitly as a result of an artificial book value that is inconsistent with Commission policy on RMR issues in PJM and is therefore not a valid basis for evaluating the settlement rate.

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13 *See* Motion for Leave to File Answer and Answer of the Maryland Office of People's Counsel to Contested Joint Offers of Settlement, Docket No. ER24-1787-001, et al. (March 13, 2025) at 5–8.

14 *See id.* at 5.

15 *See* Reply Comments of the Commission Trial Staff on Offer of Settlement, Docket No. ER24-1787-001 et al. (February 26, 2025) 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 Affidavit ¶ 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 Affidavit ¶ 21.]").

16 *See id.*

The May 1st Order also relies on a comparison to the result that would have occurred in litigation. The outcome of litigation is speculative. A hearing on the merits with involuntary discovery and fact finding never occurred. No record evidence exists in the record that supports approval of either the rates filed by Talen or the Settlement Rates as just and reasonable cost-based rates under the applicable precedent. The May 1st Order does not attempt to identify any such evidence, but relies on Talen's assertions without examination. The May 1st Order avoids discussion of the arguments that have been raised and reasoned consideration of how those issues would be resolved at hearing. There is no objective and logical basis to find that the Settlement rate is equal to or better than the rate that would have resulted from litigation. If the Commission were to use the hypothetical litigation standard regardless, the Commission should have used the position of the Commission staff as the standard rather than Talen's inflated filing.

The reasoning adopted in the May 1st Order could result in approval of a rate at any level, and is, therefore, arbitrary and capricious.

Rehearing should be granted and the Settlement rate should be rejected.

B. The May 1st Order Reliance on Alleged Benefits Is Not Just and Reasonable.

The May 1st Order includes consideration of purported benefits as a factor in approving the Settlement rate. The May 1st Order nowhere determines the value of each benefit such that it could reasonably offset costs. No reasonable person could conclude the alleged benefits identified in the May 1st Order at P 28 would contribute to any noticeable reduction in the $83 million gap between the settlement rate and a rate based on cost of service principles identified by Staff. The flawed logic of the May 1st Order would allow the alleged benefits to offset a rate any level.

The May 1st Order ignores the arguments raised by the Maryland Office of the People's Counsel exposing each of the alleged benefits as unremarkable, inferior to the

terms of other Part V Service arrangements and/or duplicative of existing market rules.[17] Reliance on benefits with no cost-benefit analysis and with no refutation of serious questions raised about whether alleged benefits have any substance falls well short of what reasoned decision making requires.

Rehearing should be granted and the Settlement Rates should be rejected.

C. The May 1st Order's Reliance on Reliability Concerns Is Not Just and Reasonable.

The May 1st Order (at P 29) defends approval of the Settlement Rates stating that there are "serious reliability concerns at stake without the Settlements that could lead to much greater costs overall." The statement is not correct and is based solely on Talen's statements that they would refuse to provide service and put the reliability of the PJM grid at risk if the Commission did not approve the Settlement Rates.[18] No party at any time argued against retaining the plants for Part V Service on just and reasonable terms. The May 1st Order reveals here an assumption that Part V Service would not be provided if Talen's unjust and unreasonable demands were not met. The May 1st Order improperly compares the Settlement Rates to serious degradation of reliability in PJM and not to the level of compensation that is just and reasonable.

Talen's threat to not provide service is a form of market power. It is basic economics that to the extent that the seller's services are required for the reliability of the PJM grid, the

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17 *See* Motion for Leave to File Answer and Answer of the Maryland Office of People's Counsel to Contested Joint Offers of Settlement, Docket No. ER24-1787-001, et al. (March 13, 2025) at 11–15.

18 *See* Talen, Settlement Transmittal Letter, Docket No. ER24-1787-001, et al. (January 27, 2025) at 7 ("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.45 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.[footnote omitted] Absent approval of the Offer of Settlement, however, Wagner will do just that.").

seller has structural market power and the related ability to exercise market power by demanding excessive compensation.[19]

Rehearing should be granted and the Settlement Rates should be rejected.

D. The May 1st Order's Reliance on Support from Load Interests Is Not Just and Reasonable.

The May 1st Order reference to support from load interests does not indicate that those interests believe the level of the rate is just and reasonable. Those same parties argued for significantly lower rates than the Settlement Rates. The record reveals that the level of the Settlement Rates is excessive and explicitly relies on factors that are unrelated to and do not support the level of the Settlement Rates.

Rehearing should be granted and the Settlement Rates should be rejected.

II. STATEMENT OF ISSUES

This request for rehearing presents the following issues:

Whether the May 1st Order explains why the level of Settlement Rates is just and reasonable, including as a package, and whether the May 1st Order adequately considered contrary evidence in the record.

Whether reliance on rates filed by a utility, but never examined at hearing, and unsupported by evidence acceptable under existing Commission precedent, can appropriately be considered in evaluating whether the overall level of a rate is just and reasonable.

Whether the alleged and unquantified non-rate benefits are really substantive benefits and, if so, whether such benefits support a finding that the Settlement Rates are just and reasonable.

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[19] *See, e.g.*, FERC v. Electric Power Supply Association, 577 U.S. 260 (2016); Hughes v. Talen Energy Marketing, LLC, 578 U.S. 150 (2016); California ex rel. Lockyer v. FERC, 383 F.3d 1006 (9th Cir. 2004); Town of Norwood v. New England Power Co., 202 F.3d 408 (1st Cir. 2000); Otter Tail Power Co. v. United States, 410 U.S. 366 (1973).

Whether the alleged need for the Settlement Rates, even if excessive, in order to avoid harm to reliability indicates that the seller has market power and has exercised such market power through the settlement negotiations.

Whether reliance on the support for the Settlement Rates by some of the parties representing load interests supports a finding that the Settlement rates are just and reasonable.

Whether Commission precedent concerning the inclusion of fixed costs in Part V cost of service rates reasonably extends to the inclusion of fictional fixed costs in a Part V rate for a unit that purchased the identified assets in an arms length transaction at a much lower price.

III. CONCLUSION

For the reasons provided above, the Market Monitor respectfully requests that the Commission grant rehearing.

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 Eagleville, Pennsylvania,
this 30th day of May, 2025.

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