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February 28, 2025

Mr. Mark Takahashi, Chair, PJM Board of Managers
Mr. Manu Asthana, President and CEO
PJM Interconnection, LLC
2750 Monroe Boulevard
Audubon, Pennsylvania 19403

Re: Request for application under the Federal Power Act, section 202(c) (16 USC § 824a(c)) for an order for continued operation of the Brandon Shores and Wagner Power Plants.

Dear Mr. Takahashi and Mr. Asthana:

The Maryland Office of the People's Counsel of Maryland ("OPC") writes to ask PJM Interconnection, LLC ("PJM") to establish a backstop to ensure reliability is maintained for Maryland electric customers in the wake of certain threats to that reliability made in filings with the Federal Energy Regulatory Commission ("FERC"). Specifically, we request that PJM prophylactically request the Secretary of the Department of Energy to issue an order under the Federal Power Act ("FPA"), section 202(c), directing Talen Energy Corporation and its two subsidiaries, Brandon Shores LLC and Wagner LLC (collectively referred to here as "Talen"), 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 (the "Power Plants").[1]

As you are aware, PJM has determined that the continued operation of the Power Plants following June 1, 2025, is required until certain transmission upgrades can be completed in order to avoid certain grid reliability criteria violations. Following this determination by PJM, Talen filed with FERC on April 18, 2024, to provide Part V Reliability Service, under the terms of PJM's Open Access Transmission Tariff ("OATT")

[1] FPA, § 202(c) (16 USC §824a(c)) and its implementing regulations provide that PJM may request an order to require operation of electric facilities on a temporary basis to address emergencies due to, among other causes, a "shortage... of facilities for the generation or transmission of electric energy...." *See also* 10 CFR §205.371 (the "emergency" supporting resort to a §202(c) order may include "an unexpected inadequate supply of electric energy..."). The Secretary of the Department of Energy exercises the authority conferred by FPA, §202(c), pursuant to 42 USC §7151(b).

(also referred to as “reliability must-run" or “RMR” service) commencing on June 1, 2025, through operation of the Power Plants. FERC opened two dockets to consider Talen’s filings, ER24-1787 (for Wagner) and ER24-1790 (for Brandon Shores). In these filings (the “Talen Initial Filings”), Talen expressly opted for the “cost of service” method of compensation as provided under OATT, sec. 119, as determined by FERC.

A number of parties objected to the level of compensation sought by Talen, including OPC, and FERC, in its initial order in the proceedings, set the matters for hearing and settlement procedures.[2] Following that FERC order, Talen and certain other consenting parties, including PJM, agreed to settle the matter and Talen filed with FERC proposed joint settlement offers (“JSOs”) on January 27, 2025, seeking FERC approval.

In its cover letters to the JSOs filings at FERC, Talen states:

> Failure by the Commission to approve the Offer[s] of Settlement would result in not only collapse of the settlement process but also the permanent deactivation of the [Power Plants] .... before the completion of the transmission upgrades that PJM has stated are critically needed. [Talen] 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 [the Power Plants] ... to run. Absent approval of the Offer of Settlement, however, [Talen] will do just that.[3]

As documented in the comments on the JSOs of Monitoring Analytics, LLC, PJM’s independent market monitor (the “IMM”), and OPC in pleadings filed at FERC dated February 18, 2025, the level of compensation sought by Talen in the JSOs for the provision of Part V Reliability Service from the Power Plants far exceeds any reasonable determination of the cost of service of the Power Plants as is permissible under the FPA and under the standard that Talen elected to follow in its filings with FERC for approval of RMR arrangements for the Power Plants. The IMM and OPC have identified in their filed comments with specificity the excessive level of compensation sought by Talen as identified in the JSOs.[4] Moreover, FERC Trial Staff, in its initial comments on the JSOs, while not objecting to the overall framework of the JSOs, states:

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

[3] Talen, Joint Offer of Settlement re: Continuing Operations Rate Schedule Request for Expedited Consideration, Dockets ER24-1787-001, ER24-1790-001 (January 27, 2025), p. 7.

[4] See, OPC, Protest of Contested Settlement, Dockets ER-1787 et al. (Feb. 18, 2025), p. 21; IMM, Comments of the IMM for PJM in Opposition to Offer of Settlement, Dockets ER-1787-001 et al. (Feb. 18, 2025) (Attachment, Affidavit of Joseph E. Bowring on behalf of the IMM, p. 8).

> Trial Staff does not agree with each and every individual component that would be needed to reach the black box Monthly Fixed Cost Charges reflected in the Stipulation. Most importantly, [Talen's] proposed starting net book value for the Facilities, and their interpretation of the Original Cost Test, would be contested and potentially adjusted in a hearing. The same is true of the [Talen's] proposed depreciation methodology for the Facilities and, more generally, the Generators' return on equity and capital structure.[5]

The JSO filings and Talen's recently filed reply comments in support of the JSOs do not provide substantial evidence to counter the comments of OPC and IMM and the supporting affidavit of the IMM, showing that the JSOs' level of compensation is far in excess of just and reasonable rates as required by the FPA. Moreover, FERC Trial Staff in its reply comments, while not objecting to the overall settlement, provide substantial evidence that the level of compensation embodied in the JSOs exceeds the cost of service of the Power Plants by $83 million per year.[6] In filing their comments on the JSOs and objecting to the excessive levels of compensation sought in the JSOs, OPC and IMM are doing no more than pursuing their rights as intervenors in the FERC proceedings addressing Talen's RMR arrangements seeking compliance with the FPA's mandate that rates be "just and reasonable."

The excessive RMR costs are particularly a concern given the extreme impacts on the affordability to ratepayers in the Baltimore metropolitan area due to the concurrent impacts on their wholesale electric power rates beginning on June 1, 2025, including:

> (a) the huge increase in capacity costs resulting from PJM's annual capacity auction conducted in July 2024 for service during the 2025/2026 PJM capacity market delivery year;
>
> (b) the additional increase in capacity costs within the BGE locational deliverability area ("LDA"), in excess of the PJM-footprint wide capacity costs during the 2025/2026 delivery year; and
>
> (c) the beginning of charging for the Talen RMR arrangement costs (particularly as inflated by the level of compensation sought in the JSOs) which start June 1, 2025, a majority of which will be allocated

[5] Trial Staff, Initial Comments of the Commission Trial Staff on Offer of Settlement (Feb. 18, 2025), p. 13.
[6] Trial Staff's reply comments indicate that the JSOs proposed level of compensation is some $83 million/yr. (or 85%) in excess of the "cost of service independently calculated by Trial Staff." Trial Staff, Reply Comments of the Commission Trial Staff on Offer of Settlement (February 26, 2025), p. 10.

> to ratepayers in the BGE LDA and will not be offset, during the 2025/26 delivery year, by capacity market revenues attributable to the Power Plants.

The unjust and unreasonable JSOs are even more a concern because the high capacity costs for the 2025/2026 delivery year are directly traceable to the removal of the Power Plants from the supply offers considered in the July, 2024 PJM capacity market auction for the 2025/2026 delivery year commencing on June 1, 2025, and their treatment, instead, as RMR resources, as determined by IMM[7] and OPC,[8] in separate analyses. Moreover, by requiring inclusion of RMR units in capacity auction supply offers in future auctions, in a PJM filing approved by FERC, PJM concurs in that conclusion.[9]

In their protests of the JSOs, both OPC and IMM emphasize their support for continued operation of the Power Plants under RMR arrangements. But that should only occur at levels of compensation that conform to the just and reasonable requirement of the FPA and not the excessive levels as set forth in the JSOs.

Talen's assertion in the JSOs filings—linking the payment 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"—is infirm. OPC and IMM are not objecting 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

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[7] IMM, *Analysis of the 2025/2026 RPM Base Residual Auction, Part A* (Sep. 20, 2024) ("[H]olding everything constant, the fact that the RMR resources in the BGE LDA [i.e., the Power Plants] were not included in the supply curve at $0-MW day resulted in a 41.2 percent increase in RPM revenues, $4,287,256,309 for the 2025/2026 RPM Base Residual Auction compared to what RPM revenues would have been had the capacity of those RMR resources been included in the supply curve at $0 per MW-day") at 2, 9, 12-13.

[8] *See* Maryland Office of People's Counsel, *Bill and Rate Impacts of PJM's 2025/2026 Capacity Market Results and Reliability Must-Run Units in Maryland* (August 2024, corrected 8/29/24) at 27.

[9] *PJM Interconnection, LLC*, 190 FERC ¶ 61,088 (Feb. 14, 2025) (accepting proposed PJM capacity market rule changes to require inclusion of qualifying RMR units in the capacity market supply stack for future BRAs).

Power Plants. It will receive just and reasonable compensation as determined by FERC. 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.

For the foregoing reasons, OPC requests that PJM, faced with Talen's assertions cited above, prepare an application under FPA, section 202(c), for an order from the Secretary of the Department of Energy to direct continued operation of the Power Plants following May 31, 2025, to allow the Commission to establish procedures to permit a determination of the appropriate level of compensation conforming to the FPA, while assuring and maintaining the continued operation of the Power Plants and the provision of OATT, Part V Reliability Service.

Respectfully,

David S. Lapp
People's Counsel

Cc: Frederick Hoover, Chair, Maryland Public Service Commission (PSC)
Miles Mitchell, General Counsel, PSC
Joseph Bowring, PJM Independent Market Monitor (IMM)
Jeffrey Mayes, General Counsel IMM