

153 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

PPL Corporation
RJS Power Holdings LLC

Docket No. EC14-112-002

ORDER ON MOTION TO AMEND MITIGATION

(Issued November 30, 2015)

1. On September 28, 2015, Talen Energy Corporation (Talen Energy), pursuant to section 203(b)¹ of the Federal Power Act (FPA) and Ordering Paragraph (C)² of the order conditionally authorizing subject to mitigation the multi-step transaction that resulted in the formation of Talen Energy, filed a motion to amend the mitigation plan proposed by PPL Corporation and RJS Power Holdings, LLC (together, Applicants) and approved by the Commission in the Section 203 Order.³ Specifically, Talen Energy moved to amend the mitigation plan to include a third divestiture option

¹ 16 U.S.C. § 824b(b) (2012).

² *PPL Corp. and RJS Power Holdings LLC*, 149 FERC ¶ 61,260, at Ordering Paragraph (C) (2014) (requiring Commission to be informed within 30 days of any material change in circumstance that departs from the facts the Commission relied upon in authorizing the proposed transaction) (Section 203 Order).

³ *See* Talen Energy Corp. September 28, 2015 Motion to Amend Mitigation Option and Request for Extended Comment Period and Confidential Treatment, Docket No. EC14-112-002 (Motion to Amend Mitigation). A motion to amend mitigation was originally submitted on September 8, 2015. *See* Talen Energy Corp. September 8, 2015 Motion to Amend Mitigation Plan and Request for Extended Comment Period, Docket No. EC14-112-001. The September 8, 2015 motion, however, was withdrawn simultaneously with the filing of the revised motion to amend mitigation that is addressed in this order.

(Option 3) that combines certain assets included in the divestiture option (Options 1 and Option 2) that the Commission approved in the Section 203 Order. Talen Energy states that, under Option 3, Talen Energy would divest the Ironwood generating unit, which is part of Option 1, as well as the Crane, Holtwood, and Wallenpaupack units, which are part of Option 2. Talen Energy would retain ownership of the remaining units from Option 1 and Option 2, which are referred to as the “Sapphire Units.”⁴ Further, consistent with the Section 203 Order, the Sapphire Units, if retained by Talen Energy, will be offered into the PJM Interconnection, L.L.C. (PJM) energy market within the 5004/5005 submarket at cost-based offers.⁵ Talen Energy asserts that Option 3 is essentially of equivalent size, in terms of megawatts (MW) divested, and effect, in terms of market concentration, as the prior approved mitigation.⁶

2. As explained below, we will grant Talen Energy’s Motion to Amend Mitigation because the revised mitigation proposal is consistent with the public interest and it will have a comparable effect on competition as the mitigation required by the Section 203 Order.

I. Background

A. Section 203 Proceeding

3. In the Section 203 Order, the Commission conditionally authorized, subject to mitigation, a multi-step transaction whereby the interests of PPL Energy Supply, LLC (a subsidiary of PPL Corporation) in various generating units would be combined with generating units owned by subsidiaries of RJS Power Holdings LLC to form a new company, Talen Energy. To address horizontal market power concerns identified in

⁴ The Sapphire Units are so named because they are owned by Sapphire Power Generation Holdings LLC (Sapphire Power), a wholly owned subsidiary of Talen Energy. The Sapphire Units include the generating facilities owned by Bayonne Plant Holding, LLC (Bayonne), Camden Plant Holding, L.L.C. (Camden), Elmwood Park Power, LLC (Elmwood Park), Newark Bay Cogeneration Partnership, L.P. (Newark Bay), Pedricktown Cogeneration Company LP (Pedricktown), and York Generation Company LLC (York). Option 1 requires the divestiture of Ironwood and the Sapphire Units, and Option 2 requires the divestiture of Crane, Holtwood, Wallenpaupack, and the Sapphire Units. *See* Motion to Amend Mitigation at 2 & nn.7-8. *See also* chart, *infra*, P 7.

⁵ Motion to Amend Mitigation at 12.

⁶ *Id.* at 11, 13-16; 18-19. *See also id.*, Attachment B, Solomon Aff. at 4.

the application, Applicants proposed and the Commission accepted Applicants' proposal to divest certain generating facilities in the market where there were horizontal market power concerns. Under Applicants' mitigation proposal, Talen Energy was required to enter into an agreement for the divestiture of certain generation facilities within one year of the closing of the transaction.⁷ The facilities to be divested consisted of approximately 1,300 MW of generation capacity grouped into either Option 1 or Option 2.⁸ The Sapphire Units, totaling approximately 656 MW of generating capacity, were included in both Options 1 and 2. Option 1 required the divestiture of the Ironwood unit and the Sapphire Units, and Option 2 required the divestiture of the Crane, Holtwood, Wallenpaupack units, and the Sapphire Units.⁹

4. The Commission also required additional mitigation measures to alleviate residual horizontal competition concerns in the PJM 5004/5005 submarket,¹⁰ and allowed Talen Energy to choose from three alternatives: (1) limit offers from Mitigated Assets¹¹ to cost-based offers in the energy market within the PJM 5004/5005 submarket; (2) divest all of the assets included in both Option 1 and Option 2; or (3) submit a different mitigation proposal that would alleviate the competition concerns in the PJM 5004/5005 submarket.¹²

⁷ Section 203 Order, 149 FERC ¶ 61,260 at P 88.

⁸ *Id.* See also chart, *infra*, P 7.

⁹ See Motion to Amend Mitigation at 2 & nn.7-8. See also chart, *infra*, P 7.

¹⁰ Specifically, the Commission found "residual screen failures in the 5004/5005 submarket under super peak 1 conditions when the [Herfindahl-Hirschman Index (HHI)] changes are above 100 points, ranging from 110-121, and the market HHIs are above 1,000 points, ranging from 1,041-1,052." Section 203 Order, 149 FERC ¶ 61,260 at P 90.

¹¹ Mitigated Assets are the generation units that are in Option 1 or Option 2 that Talen Energy would continue to own after completing one or the other divestiture options.

¹² Section 203 Order, 149 FERC ¶ 61,260 at P 91. In addition to the divestiture options (Option 1 and Option 2), the Commission also approved interim mitigation measures pursuant to which the output of the Mitigated Assets is controlled by an Independent Energy Manager who will continue to offer all energy and ancillary services from the Mitigated Assets until the divestitures are complete. *Id.* P 93. To

(continued...)

5. On January 27, 2015, Applicants informed the Commission that they had elected alternative one from the Commission's required additional mitigation measures, and committed to limiting offers from Mitigated Assets to cost-based offers in the PJM 5004/5005 submarket energy market.¹³ On May 26, 2015, Talen Energy agreed to be bound by the terms of the mitigation accepted in the Section 203 Order.¹⁴ The transaction was completed on June 1, 2015.¹⁵

B. Motion to Amend Mitigation

6. In its Motion to Amend Mitigation, Talen Energy describes complications associated with efforts to divest one of the generating units included in the Option 1 divestiture plan, namely, the Bayonne facility. Specifically, Talen asserts that the lease for the land underlying the Bayonne facility will expire on October 31, 2018, and the Bayonne facility (a gas-fired cogeneration facility) must be dismantled by November 1, 2019. Talen Energy further explains that, due to its inability to renew the lease beyond its present term, Bayonne has notified PJM of its intent to deactivate the Bayonne facility as of November 1, 2018. Talen Energy asks the Commission to approve modification of the options to include a third option, Option 3, which consists of all of the non-overlapping units in Option 1 and Option 2, such that the Bayonne facility is not included as one of the facilities being divested under Option 3.¹⁶

ensure compliance, an independent monitor monitors the Independent Energy Manager's control of the Mitigated Assets.

¹³ PPL Corp. and RJS Power Holdings, LLC January 27, 2015 (Mitigation Plan) Informational Filing, Docket No. EC14-112-000.

¹⁴ Talen Energy Corp. May 26, 2015 Acknowledgement, Docket No. EC14-112-000.

¹⁵ PPL Corp. and RJS Power Holdings, LLC June 1, 2015 Notice of Consummation, Docket No. EC14-112-000.

¹⁶ Motion to Amend Mitigation at 9-11.

7. The chart below shows which units are in Options 1-3:

Option 1		Option 2		Option 3	
Facility	Size (MW)	Facility	Size (MW)	Facility	Size (MW)
Bayonne	158	Bayonne	158		
Camden	145	Camden	145		
Elmwood Park	65	Elmwood Park	65		
Newark Bay	120	Newark Bay	120		
Pedricktown	118	Pedricktown	118		
York	49	York	49		
Ironwood	660			Ironwood	660
		Crane	399	Crane	399
		Wallenpaupack	44	Wallenpaupack	44
		Holtwood	248	Holtwood	248
Total	1315	Total	1346	Total	1351

8. To support its Motion to Amend Mitigation, Talen Energy submitted a delivered price test for the PJM 5004/5005 submarket and analyzed the effect of Option 3 on competition. Talen Energy concludes that the effect on competition that results from divesting the four units in Option 3 is similar to the effect on competition achieved by divesting the units included in either Option 1 or Option 2.¹⁷ Talen Energy states that the same lone screen failure that is present under both Options 1 and 2 (during the summer super peak for available economic capacity) is also present in Option 3.¹⁸ Talen Energy also states that it will continue to abide by the

¹⁷ Motion to Amend Mitigation at 13-16, 18-19; Solomon Aff. at 4. Specifically, Talen Energy states that Option 3 has essentially the same effect on HHIs and HHI changes as Option 2, which the Commission already approved. Motion to Amend Mitigation at 15. While Option 3 has an “incrementally negligible increase” on HHIs and HHI changes in comparison to Option 1, Talen Energy asserts that this small incremental increase “is not suggestive of any additional competitive harm.” *Id.* at 16 & n.63; *see also* Solomon Aff. at 4.

¹⁸ Motion to Amend Mitigation at 14.

condition imposed by the Section 203 Order to offer its Mitigated Assets at cost-based energy offers within the PJM 5004/5005 submarket.¹⁹ Further, to ensure that the Bayonne facility cannot be physically withheld, Talen Energy agrees to offer the Bayonne facility into the PJM day-ahead market for the duration of its life following the expiration of its capacity obligation on May 31, 2018.²⁰

9. Talen Energy states that the Sapphire Units include the Bayonne facility, and by retaining ownership of the Bayonne facility, Option 3 would provide Talen Energy with the flexibility to deactivate the facility without having to remove it from the divestiture options.²¹

10. Talen Energy asserts that Option 3 will continue to ensure that the transaction has no adverse effect on horizontal market power and is consistent with the public interest. Talen Energy asserts that Option 3 provides greater flexibility for potential buyers to bid on units they value most, facilitates the implementation of the mitigation ordered by the Commission, and addresses the changed circumstances that affect the Bayonne facility.

11. Talen Energy adds that Option 3 provides slightly better market power mitigation than the removal of the Bayonne facility from Option 1 and Option 2 that Talen Energy had previously considered.²²

II. Notice of Filing and Responsive Pleadings

12. Notice of the Motion to Amend Mitigation was published in the *Federal Register*, 80 Fed. Reg. 60,666 (2015), with interventions and protests due on or before October 19, 2015.

¹⁹ *Id.* at 16. Talen Energy states that the cost-based offer commitment ensures that Talen Energy will not be able to withhold the Sapphire Units economically. *Id.*; *see also* Solomon Aff. at 4-5.

²⁰ Motion to Amend Mitigation at 16. *See also* McGuire Aff. at P 12. Talen Energy states that the Bayonne facility's deactivation date is October 31, 2018. Motion to Amend Mitigation at 16 & n.6. *See also* McGuire Aff. at P 12.

²¹ Motion to Amend Mitigation at 18; McGuire Aff. at PP 11-12.

²² Motion to Amend Mitigation at 3.

13. On October 19, 2015, Macquarie Infrastructure Corporation (Macquarie) filed a motion to intervene and protest (Macquarie Protest). On October 28, 2015, Talen Energy filed a motion for leave to answer and answer to the Macquarie Protest (Talen Energy Answer). On November 12, 2015, Macquarie filed an answer to the Talen Energy Answer (Macquarie Reply).

A. Macquarie Protest

14. Macquarie protests Talen Energy's Motion to Amend Mitigation. Macquarie states that a downstream affiliate leases the land to Bayonne. Macquarie explains that the terms of the lease agreement provide for a 20-year land lease, followed by two automatic extensions totaling 12 years, for a total term of 32 years, or until 2018. Macquarie states that under the terms of the lease agreement, Bayonne would have no right to remain on the property after 2018.²³ Macquarie asserts that the expiration of the Bayonne lease agreement was known 28 years before the Bayonne facility was included in the two mitigation options Applicants proposed to the Commission.

15. Macquarie highlights Talen Energy's assertion in the Motion to Amend Mitigation that termination of the lease was "not foreseeable or reasonably certain to occur when Bayonne was first included in the mitigation Options."²⁴ Macquarie argues that Applicants knew the current lease would expire in 2018 and a new lease would be required. Macquarie states that, if Applicants believed renewal of the lease was a material pre-condition to divesting the Bayonne facility, they should have reached agreement on the renewal of the lease before submitting a mitigation proposal requiring divestiture of the Bayonne facility.²⁵

16. Macquarie states that Applicants received the notice of the intent not to renew the lease on October 16, 2014, well before Talen Energy committed to the Commission that it would divest the Bayonne facility. Macquarie states that upon receiving notice of the intent not to renew the lease, steps were taken to retire the Bayonne facility, and, notwithstanding these efforts to retire the Bayonne facility, Applicants submitted a letter to the Commission on January 27, 2015, committing to a mitigation option (Option 1) that included the divestiture of the Bayonne facility.²⁶

²³ Macquarie Protest at 4.

²⁴ *Id.* at 4 (quoting Motion to Amend Mitigation at 18).

²⁵ *Id.* at 5.

²⁶ *Id.* at 6 (citing Informational Filing, Docket No. EC14-112-000 (Jan. 27, 2015)).

Macquarie adds that, five months later, Talen Energy filed a letter with the Commission adopting the commitment Applicants had previously made to divest the Bayonne facility.

17. Macquarie highlights the fact that section 33.2(d) of the Commission's regulations provides that "[t]he applicant must supplement its application promptly to reflect in its analysis *material changes that occur after the date a filing is made* with the Commission, but before final Commission action."²⁷ Macquarie adds that Ordering Paragraph (C) of the Section 203 Order required Applicants to "inform the Commission *within 30 days of any material change in circumstance* that departs from the facts the Commission relied upon in authorizing the Proposed Transaction."²⁸ Macquarie states that (prior to the Motion to Amend Mitigation) no filing was ever made to the Commission concerning the notice of non-renewal or suggesting that the impending termination of the Bayonne facility's lease was a material change in circumstances that affected the proposed mitigation.

18. Macquarie notes that it had expressed interest in owning the Bayonne facility and had made a first stage indicative offer to purchase it,²⁹ but the second stage of the bidding process was canceled before completion. Macquarie states that, after notifying Talen Energy of its intent not to renew the lease, Macquarie communicated that it was prepared to pay for the Bayonne facility based on the net present value of RJS Power Holdings LLC's projections of the net revenues that would be earned by the Bayonne facility for the remaining years of Bayonne's rights to its leased property.

19. Macquarie asserts that this amount would have fully compensated Talen Energy for the economic value of the projected net revenues the Bayonne facility would earn over the remaining time that Talen Energy had the legal right to operate the Bayonne facility. Macquarie adds that its offer was likely superior economically to what Talen Energy could achieve from the Bayonne facility if its Motion to Amend Mitigation were granted because its offer would have relieved Talen Energy of its obligation under the lease agreement to dismantle and remove the generation facility upon lease expiration.

²⁷ *Id.* (quoting 18 C.F.R. § 33(d) (2015) (emphasis added in Macquarie Protest)).

²⁸ *Id.* (citing Section 203 Order, 149 FERC ¶ 61,260 at Ordering Paragraph (C) (emphasis added in Macquarie Protest)).

²⁹ *Id.* at 7.

20. Macquarie argues that it is inappropriate for the Commission to grant Talen Energy's Motion to Amend Mitigation because there is no material change in circumstances. Macquarie asserts that all of the information regarding the Bayonne facility and the status of the lease agreement was known prior to Talen Energy committing to the Commission to divest the Bayonne facility as part of its mitigation proposal. Further, Macquarie insists that, since it has made an offer for the Bayonne facility, it is possible for Talen Energy to divest the Bayonne facility.³⁰

21. Macquarie adds that dissatisfaction with the offer to purchase the Bayonne facility does not constitute a material changed circumstance because a mitigation proposal cannot be contingent on the price obtained under mitigation.³¹

22. Macquarie argues that, despite the similar effect on HHIs, Talen Energy's proposed mitigation modification would adversely affect the public interest. Macquarie explains that it intends to keep the Bayonne facility in service past 2018 and continue to make sales of capacity and energy, whereas Talen Energy intends to retire the facility, which could lead to a capacity shortage in PJM.³²

B. Talen Energy Answer

23. Talen Energy responds that Macquarie does not challenge the competitive analysis presented in the Motion to Amend Mitigation, but instead focuses on its own particular interests.³³ Talen Energy contends that Macquarie's claim of reliability concerns are unfounded because the PJM Base Residual Auction for the 2018/2019 delivery year procured more capacity than its targeted reserve margin of 15.7 percent and PJM did not identify any reliability concerns in approving Bayonne's deactivation request.³⁴

³⁰ *Id.* at 8.

³¹ *Id.* (citations omitted).

³² *Id.* at 9-10 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015); PJM Interconnection, News Release, *PJM'S Capacity Auction Draws Landmark Commitment From Electricity Resources to Perform Whenever Needed*, (Aug. 21, 2015)).

³³ Talen Energy Answer at 4.

³⁴ *Id.* at 7.

24. Talen Energy explains that the materiality of the lease expiration was only determined after the transaction was completed. Before this date Talen Energy could not assess the circumstances at the Bayonne facility and determine whether it could fully address the market power concerns identified by the Commission.³⁵ In addition, Talen Energy opposes Macquarie's motion to intervene at this stage of the proceeding, arguing that Macquarie could have foreseen earlier that its interests would be affected.

C. Macquarie Reply

25. In its reply, Macquarie reiterates the arguments it made in its protest, namely, that the non-renewal of the lease cannot constitute a changed circumstance warranting modification of mitigation because Applicants and Talen Energy were aware of this fact in advance of proposing and accepting divestiture of Bayonne as part of Applicants' mitigation package. In addition, Macquarie provides details concerning price negotiations for the Bayonne facility. Specifically, Macquarie states that Talen Energy's claim that Macquarie's offer was commercially unreasonable appears to be based on the assertion of Mr. McGuire, in his affidavit attached to the Talen Energy answer, that Talen Energy has determined that the equipment located on the Bayonne site has a salvage value greater than the dismantlement costs.³⁶ Macquarie states that to address this claimed valuation—a valuation that it does not share given that the plant will be 30 years old at the time of dismantlement—Macquarie recently made an offer that would give Talen Energy the option of either: (a) removing this equipment in 2018, at which time Macquarie intends to install new replacement generation facilities; or (b) leaving the equipment in place, in which case Macquarie intends to either continue to operate the facility as currently configured or make improvements to the facility. Macquarie states that it views this approach as being inferior to the simple sale of the Bayonne facility that it had originally proposed, as it may require the Bayonne facility to be taken out of service while the old equipment is being replaced. Macquarie states that, nevertheless, its new offer addressed Talen Energy's objection to the sales price Macquarie had previously offered.

³⁵ *Id.* at 8.

³⁶ Macquarie Reply at 2 & n.1 (citing McGuire Aff. ¶ 4).

III. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁷ we will grant Macquarie's motion to intervene. Notwithstanding Talen Energy's opposition, we find that good cause exists to permit Macquarie to intervene given its interest in this stage of the proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁸ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the Talen Energy Answer and the Macquarie Reply because they have provided information that assisted us in our decision-making process.

B. Modified Mitigation Proposal

28. We will grant Talen Energy's request under section 203(b) of the FPA³⁹ to modify Applicants' mitigation proposals. The effect of the proposed Option 3 divestitures on horizontal competition in the PJM 5004/5005 submarket are comparable to the effect on horizontal competition under Option 1 or Option 2, and the Commission finds no adverse effect on competition. If Talen Energy chooses Option 3, we will require Talen Energy to complete the Option 3 divestitures within one year of the closing of the transaction, i.e., by June 1, 2016.

29. In the Section 203 Order, the Commission found Applicants' proposed mitigation insufficient to ensure that the Proposed Transaction will not adversely affect competition in the PJM 5004/5005 submarket.⁴⁰ While the Commission required additional mitigation, the Commission did not impose a particular mitigation condition, but rather gave Applicants three alternatives, including the opportunity for Applicants and Talen Energy to create their own mitigation measure to address the competition problem. Specifically, in the Section 203 Order, the Commission informed Applicants that they could elect one of the following additional mitigation measures:

³⁷ 18 C.F.R. § 385.214 (2015).

³⁸ 18 C.F.R. § 385.213(a)(2) (2015).

³⁹ 16 U.S.C. § 824b(b).

⁴⁰ Section 203 Order, 149 FERC ¶ 61,260 at PP 89-90.

(1) limit offers from the Mitigated Assets that Talen Energy continues to own after completing the divestiture of the Option 1 or Option 2 assets to cost-based offers in the energy market within the 5004/5005 submarket; or (2) divest all of the Mitigated Assets, that is, units included in both Option 1 and Option 2. Alternatively, Applicants may submit a compliance filing in which they propose different mitigation measures to address the adverse effect on competition in the 5004/5005 submarket. If Applicants choose to implement either of the additional mitigation measures enumerated in (1) or (2) above, we find that the Proposed Transaction will have no adverse effect on horizontal market power. On this basis, Applicants shall inform the Commission through an informational filing in this docket prior to closing of the Proposed Transaction which of the two additional mitigation measures is selected. If, on the other hand, Applicants choose to submit a different mitigation proposal to address the adverse effect on competition in the 5004/5005 submarket, Applicants must make a compliance filing that includes a horizontal market power analysis demonstrating that the Proposed Transaction will have no adverse effect on competition in that submarket.⁴¹

30. Applicants initially chose the first alternative, that is, to limit offers from Mitigated Assets to cost-based bids until the units included in Option 1 or Option 2 could be divested. Talen Energy is now seeking permission to divest the non-overlapping units in Options 1 and 2 and, instead, retain the Sapphire Units, which thereby become the Mitigated Assets subject to Talen Energy's additional mitigation commitment required to address the adverse effect on competition in the PJM 5004/5005 submarket. In support of its Motion to Amend Mitigation, Talen Energy submitted a new delivered price test to show that the change in HHIs resulting from Option 3 are approximately equivalent to those resulting from Options 1 and 2.⁴² We find that Talen Energy's proposed Option 3, the divestiture of the Ironwood, Holtwood, Wallenpaupack, and Crane Facilities, along with continued limit of cost-based offers in the PJM 5004/5005 submarket from the Mitigated Assets, adequately address horizontal competition concerns.

⁴¹ *Id.* P 91.

⁴² Motion to Amend Mitigation at 11, 13-16, 18-19; *see also* Solomon Aff. at 3-4.

31. Macquarie's arguments regarding whether the non-renewal of the Bayonne lease agreement and ensuing negotiating status of the Bayonne facility constitute a material change in circumstances are not relevant to our analysis here under section 203 of the FPA. Rather, under section 203 of the FPA, the Commission is required to ensure that a proposed transaction is consistent with the public interest,⁴³ which includes finding that the transaction does not adversely impact competition.⁴⁴ Accordingly, the appropriate standard to apply here is whether the proposed revised mitigation adequately addresses the market power concerns identified in the Section 203 Order, i.e., the effect of the proposed revised mitigation on competition, in particular, within the PJM 5004/5005 submarket.

32. We agree that the effect of the proposed revised mitigation is comparable to the effect on competition of the mitigation measures that the Commission set forth in the Section 203 Order and Applicants originally elected. While the Commission required additional mitigation measures to address competitive concerns in the PJM 5004/5005 submarket, the Commission gave Applicants and Talen Energy flexibility in how to satisfy the mitigation condition.

33. For the reasons discussed above, we find that the proposed modification will continue to ensure that the transaction has no adverse effect on horizontal market power and is consistent with the public interest. Further, as to the reliability concerns Macquarie raises, the Commission retains the ability to address any reliability issues that may arise in the future as part of our authority to oversee reliability.⁴⁵ Accordingly, the Commission will grant Talen Energy's Motion to Amend Mitigation.

⁴³ 16 U.S.C. § 824b(a)(4).

⁴⁴ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, FERC Stats. & Regs. ¶ 31,044, *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement).

⁴⁵ 16 U.S.C. § 824o (Electric Reliability). See also *Verso Bucksport LLC*, 150 FERC ¶ 61,017, at P 26 & n.23 (2015) (citing *BHE Holdings Inc.*, 133 FERC ¶ 61,231, at P 54 (2010); *National Grid plc*, 117 FERC ¶ 61,080, at P 77 (2006)).

The Commission orders:

(A) The Motion to Amend Mitigation is granted, as discussed in the body of this order.

(B) Applicants must inform the Commission within 30 days of any material change in circumstance that departs from the facts the Commission relied upon in granting the Motion to Amend Mitigation.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Talen Energy must enter into contracts to divest the assets included in Option 1, 2, or 3 within one year of the closing of the transaction, i.e., by June 1, 2016. Within 10 days of completing divestiture of the assets, Talen Energy is required to submit an informational filing to the Commission stating which option it elected.

(G) Applicants, to the extent they have not already done so, shall make any appropriate filings under sections 203 and 205 of the FPA, as necessary, to implement the subsequent divestiture transactions.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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