149 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Corporation
RJS Power Holdings LLC

Docket No. EC14-112-000

ORDER CONDITIONALLY AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued December 18, 2014)

1. On July 15, 2014, as supplemented on August 29, 2014, PPL Corporation (PPL Corp.), on behalf of the public utility subsidiaries of PPL Corp.'s indirect, wholly-owned subsidiary PPL Energy Supply, LLC (PPL Energy Supply), and RJS Power Holdings LLC (RJS Power Holdings), on behalf of its public utility subsidiaries (collectively, Applicants), filed an application requesting Commission authorization under section 203(a)(1) and, to the extent necessary, section 203(a)(2), of the Federal Power Act (FPA)[1] to complete the multi-step transaction (Proposed Transaction).[2] Specifically, pursuant to the Proposed Transaction, the interests in PPL Energy Supply's public utility subsidiaries (collectively, PPL Energy Supply Companies) will be separated from PPL Corp., distributed to PPL Corp.'s shareowners, and combined with RJS Power Holdings' public utility subsidiaries (collectively, RJS Power Holdings Companies) to form a new company, Talen Energy Corporation (Talen Energy). At the close of the Proposed Transaction, Talen Energy will be owned 65 percent by PPL Corp.'s shareowners and 35 percent by affiliates of Riverstone Holdings LLC (Riverstone). PPL

[1] 16 U.S.C. § 824b (2012).

[2] PPL Corporation and RJS Power Holdings, LLC Joint Application for Approval Pursuant to Section 203 of the Federal Power Act, Docket No. EC14-112-000 (July 15, 2014) (Joint Application).

Corp. will retain no interest in or affiliation with the PPL Energy Supply Companies after the Proposed Transaction closes. The Commission has reviewed the Joint Application under the Commission's Merger Policy Statement.[3] As discussed below, we will conditionally authorize the Proposed Transaction as consistent with the public interest.

I. Background

A. Description of Applicants and Certain Affiliates

1. PPL Corporation

2. Applicants state that PPL Corp. is a holding company within the meaning of the Public Utility Holding Company Act of 2005.[4] Applicants state that PPL Corp. is the ultimate parent of the following public utilities that are subject to the Commission's jurisdiction:

a. PPL Energy Supply Companies

i. PPL EnergyPlus

3. Applicants state that PPL EnergyPlus is a direct, wholly-owned subsidiary of PPL Energy Supply. PPL Energy Supply is a direct, wholly-owned subsidiary of PPL Energy Funding Corporation (PPL Energy Funding), which, in turn, is wholly-owned by PPL

[3] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

[4] Joint Application at 6 & n.10 (citing PPL Corp. Updated Notification of Holding Company Status Form FERC-65, Docket No. HC11-1-000 (Dec. 1, 2010)). *See also* Joint Application, Exh. B-1 (listing in a chart the facilities owned or controlled by PPL Corp.'s public utility subsidiaries and energy affiliates); Exhs. C-1, C-1a and C-ab (organizational charts depicting the current relationship between PPL Corp. and its subsidiaries).

Corp. According to Applicants, PPL EnergyPlus is a power marketer authorized to sell energy, capacity and certain ancillary services at market-based rates. In addition, PPL EnergyPlus has a reactive supply and voltage control tariff (i.e., a reactive power tariff) on file with the Commission.[5] Applicants state that PPL EnergyPlus buys and sells electricity, natural gas, and energy services in the Northeastern and Western regions of the United States. They state that other than indirect ownership of several renewable energy facilities (described below), PPL EnergyPlus does not own or operate facilities for the generation, transmission, or distribution of electric energy, although it sells wholesale power under contracts within the Commission's jurisdiction. Applicants explain that PPL EnergyPlus is one of several suppliers of the electricity required by PPL Electric Utilities Corporation (PPL Electric) to fulfill its provider of last resort obligations in Pennsylvania. Applicants state that PPL EnergyPlus participates in the competitive supply programs of several other default service providers in PJM Interconnection, L.L.C. (PJM) and other regions. Applicants add that PPL EnergyPlus also markets or brokers the output of the electric generating facilities owned by its affiliates and that PPL EnergyPlus is authorized to, and engages in, the sale of electricity on a competitive basis at retail in several states.

ii. PPL Generation Owners

4. Applicants state that the PPL Energy Supply Companies (listed below in this paragraph) are primarily engaged in the ownership and operation of generating facilities in PJM or the State of Montana. They state that each of these entities is an exempt wholesale generator (EWG) that has been granted market-based rate authority and sells the output of its respective generating facility to its affiliate, PPL EnergyPlus, pursuant to a long-term contract. They state that each of these entities is also an indirect, wholly-owned subsidiary of PPL Energy Supply. They elaborate that, as shown in Exhibit C-1a of the Joint Application, PPL Generation, LLC (PPL Generation), a direct, wholly-owned subsidiary of PPL Energy Supply, is the direct parent of the following PPL Energy Supply Companies: LMBE, PPL Brunner Island, PPL Holtwood, PPL Martins Creek, PPL Montour, and PPL Susquehanna. Applicants state that, as described below and as shown in Exhibit C-1a of the Joint Application, PPL Colstrip I, PPL Colstrip II, PPL Ironwood, and PPL Montana are indirect, wholly-owned subsidiaries of PPL Generation. PPL Renewable, PPL NJ Solar, and PPL NJ Biogas are indirect, wholly-owned subsidiaries of PPL EnergyPlus. Applicants state that the PPL Energy Supply Companies will no longer be affiliated with PPL Corp. after the Proposed Transaction is consummated.

[5] Joint Application at 7 & n.14 (citing *PPL EnergyPlus, LLC*, Docket No. ER10-3273-000 (Dec. 17, 2010) (delegated letter order)).

PJM

- **LMBE** owns the Lower Mount Bethel Energy generating plant, located in lower Mount Bethel Township, Northampton County, Pennsylvania. (545 MW summer rating)
- **PPL Brunner Island** owns the Brunner Island Steam Electric Station, located in East Manchester Township, York County, Pennsylvania. (1,411 MW summer rating)
- **PPL Holtwood** owns the Wallenpaupak Hydroelectric Station, FERC Project No. 487, located at the border of Wayne and Pike Counties, Pennsylvania, and the Holtwood Hydroelectric Station, FERC Project No. 1881, located in Martic Township, Lancaster County, Pennsylvania. (293 MW summer rating)
- **PPL Ironwood** is an indirect, wholly-owned subsidiary of PPL Generation and a direct, wholly-owned subsidiary of PPL Ironwood Holdings, LLC. PPL Ironwood owns the Ironwood Facility located in South Lebanon Township, Pennsylvania. (660 MW summer rating)
- **PPL Martins Creek** owns Martins Creek Steam Electric Station Units 3 and 4 located in Lower Mount Bethel Township, Northampton County, Pennsylvania and 23 combustion turbine generators located on nine sites throughout central and eastern Pennsylvania. (2035.8 MW combined summer rating)
- **PPL Montour** owns the Montour Steam Electric Station, located in Derry Township, Montour County, Pennsylvania. PPL Montour also owns a 12.34 percent undivided interest in the Keystone generating station, located in Armstrong County, Pennsylvania, and a 16.25 percent undivided interest in the Conemaugh generation station, located in Indiana County, Pennsylvania. (2,004 MW combined summer rating)
- **PPL Renewable** is a direct, wholly-owned subsidiary of PPL Energy Services Group, LLC, which is a direct, wholly-owned subsidiary of PPL EnergyPlus. PPL Renewable owns a few small renewable energy projects located in the PJM and ISO New England, Inc. (ISO-NE) balancing authority areas, each of which are listed in Exhibit B-1 of the Joint Application. (approximately 50 MW combined)
- **PPL NJ Solar** is a direct, wholly-owned subsidiary of PPL Renewable that owns the Summit and Princeton solar electric generating facilities. (2 MW nameplate)

- **PPL NJ Biogas** is a direct, wholly-owned subsidiary of PPL Renewable that owns the Pennsauken Landfill and Cumberland County Landfill facilities. (4.65 MW nameplate)
- **PPL Susquehanna** owns a 90 percent interest in the Susquehanna Steam Electric Station, located in Salem Township, Luzerne County, Pennsylvania. (2,244.6 MW summer rating)

Montana

- **PPL Montana** is a direct, wholly-owned subsidiary of PPL Montana Holdings, LLC, which is a direct, wholly-owned subsidiary of PPL Generation. PPL Montana owns the J.E. Corette electric generating plant and shares of Units 1, 2, and 3 of the Colstrip Power Plant in Billings, Montana in the NorthWestern Energy (NorthWestern) balancing authority area. (677 MW summer rating) PPL Montana also owns 11 hydroelectric plants along the Missouri River, the Flathead River, the Clark Fork River, the Rosebud Creek and the Madison River in the NorthWestern balancing authority area, which are not part of the Proposed Transaction, but are subject to a separate transaction authorized by the Commission. (660 MW summer rating)[6]
- **PPL Colstrip I and PPL Colstrip II** are direct, wholly-owned subsidiaries of PPL Montana. Neither PPL Colstrip I nor PPL Colstrip II possesses any jurisdictional facilities, nor is either currently engaged in wholesale sales of electricity.

b. Other PPL Public Utility Subsidiaries

5. Applicants state that, in addition to the PPL Energy Supply Companies, the following entities are public utility subsidiaries of PPL Corp. but are not part of the Proposed Transaction and will not be affected by it, except to the limited extent described below.

i. PPL Electric

6. Applicants state that PPL Electric is a direct, wholly-owned subsidiary of PPL Corp. that has market-based rate authority and owns transmission facilities located within PJM. Applicants add that PPL Electric currently serves approximately 1.4 million customers in 29 counties in eastern and central Pennsylvania. They state that PPL

[6] *See NorthWestern Corp.*, 147 FERC ¶ 62,138 (2014).

Electric's transmission system consists of approximately 3,900 miles of transmission lines and covers a service territory of approximately 10,000 square miles. Applicants explain that PJM directs the operation of PPL Electric's transmission facilities and transmission service over these facilities is provided under the PJM Open Access Transmission Tariff (OATT). Applicants state that PPL Electric has no captive wholesale or retail customers, but it is the default supplier for retail customers within its service territory under Pennsylvania's Electricity Generation Customer Choice and Competition Act.[7] Applicants add that PPL Electric purchases the energy and capacity required to satisfy its provider of last resort obligations from various suppliers, including PPL EnergyPlus, pursuant to a competitive supply auction program approved by the Pennsylvania Public Utility Commission (Pennsylvania Commission). Applicants state that PPL Electric purchases power from a Qualifying Facility (QF) pursuant to its obligations under the Public Utility Regulatory Policies Act of 1978,[8] which it sells to PPL EnergyPlus pursuant to a market-based rate contract.

ii. Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU)

7. Applicants state that LG&E and KU are direct, wholly-owned subsidiaries of LG&E and KU Energy LLC and indirect, wholly-owned subsidiaries of PPL Corp. They state that LG&E is a public utility that owns and operates electric generation, transmission, and distribution facilities, as well as natural gas distribution, transmission, and storage facilities, in Kentucky and Indiana, and that KU is a public utility that owns and operates electric generation, transmission, and distribution facilities in Kentucky, with limited operations in Tennessee and Virginia. Applicants explain that LG&E and KU directly own generation capacity and hold minority interests in certain entities that own generation, as detailed below and as shown in Exhibits C-1b and B-1 of the Joint Application.

8. According to Applicants, LG&E and KU operate a joint electric balancing authority area and own approximately 5,468 circuit miles of electric transmission lines. They state that LG&E and KU also have franchised service territories. They add that LG&E and KU have received Commission authorization to engage in wholesale sales of capacity and energy at market-based rates, which is currently limited to sales outside of the LG&E/KU balancing authority area. Applicants note that KU also supplies power to several wholesale customers under cost-based formula rates.

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[7] Joint Application at 12 & n.32 (citing 66 Pa.C.S. §§ 2801, *et seq*.).

[8] *Id.* at 13 (citing 16 U.S.C. § 824a-3(h)(2)(B) (2012)).

9. Applicants state that LG&E and KU provide transmission service under a single OATT. Applicants explain that, pursuant to terms the Commission established in approving their withdrawal from the Midcontinent Independent System Operator, Inc. (MISO), LG&E and KU contract with TranServ International, Inc. and Tennessee Valley Authority (TVA) to serve as the independent transmission organization and the reliability coordinator, respectively, for their electric transmission facilities. Applicants state that, in addition, TVA is responsible for coordination of the interfaces between LG&E/KU's transmission system and those functionally controlled by MISO and PJM under a Joint Reliability Coordination Agreement.

iii. Electric Energy, Inc. (EEInc.)

10. Applicants state that KU holds a 20 percent interest in EEInc., which owns and operates a six-unit generating facility, located in Joppa, Illinois. Applicants explain that EEInc.'s wholly-owned subsidiary, Midwest Electric Power, Inc. (MEPI), owns combustion turbines, also located in Joppa, Illinois. Applicants state that output from these facilities is under the operation and control of subsidiaries of Dynegy Inc., which is the majority (80 percent) owner of EEInc. Applicants add that both EEInc. and MEPI are EWGs. Applicants note that EEInc. has received market-based rate authority from the Commission, while MEPI sells its power to EEInc. on a cost-of-service basis. Applicants state that KU has no rights to the output of the generation facilities.

11. Applicants add that EEInc. also owns and operates electric transmission lines that interconnect its generating facilities to the transmission lines of LG&E, KU, and TVA. They explain that an OATT on file with the Commission provides open access to these lines. They note that EEInc. is the sole owner of the Joppa and Eastern Railroad Company, which owns a 3.9 mile rail line and associated railcars that transport coal shipments to EEInc.'s Joppa facility.

iv. Ohio Valley Electric Corporation (OVEC)

12. Applicants state that LG&E and KU also hold a combined 8.13 percent interest in OVEC. They add that OVEC and its wholly-owned subsidiary, Indiana Kentucky Electric Corporation, own, respectively, the Kyger Creek Generating Facility in Gallipolis, Ohio, and the Clifty Creek Generating Facility in Madison, Indiana. They note that both of these facilities are located in the OVEC balancing authority area. They state that LG&E and KU have combined contractual rights to 8.13 percent of the facilities' output.

v. LG&E Energy Marketing, Inc. (LG&E Energy Marketing)

13. Applicants state that LG&E Energy Marketing is a direct, wholly-owned subsidiary of LG&E and KU Energy LLC and an indirect, wholly-owned subsidiary of

PPL Corp. They explain that LG&E Energy Marketing is a power marketer that does not own any generating facilities. They state that LG&E Energy Marketing has a tariff for the sale of wholesale capacity and energy at market-based rates on file with the Commission. According to Applicants, however, LG&E Energy Marketing does not presently engage in any Commission-jurisdictional power sales.

2. RJS Power Holdings

14. Applicants state that RJS Power Holdings' upstream owner is Riverstone. According to Applicants, Riverstone, which was founded in 2000, is an energy and power-focused private equity firm that has raised approximately $26 billion of equity capital.[9] The following entities are Riverstone's public utility affiliates:

a. The RJS Power Holdings Companies

15. Applicants provide the following descriptions of each of the RJS Power Holdings Companies:

i. Subsidiaries of Raven Power Generation Holdings LLC (Raven Generation)

- **Brandon Shores,** a Delaware limited liability company, owns a coal-fired generating facility located in Anne Arundel County, Maryland. Brandon Shores is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. Brandon Shores is a wholly-owned, indirect subsidiary of Raven Power Fort Smallwood LLC (Raven Power), a Delaware limited liability company, which is in the business of owning generating facilities through its subsidiaries. Raven Power is a wholly-owned subsidiary of Raven Power Marketing LLC (Raven Marketing), a Delaware limited liability company. (1,273 MW summer rating)
- **Wagner,** a Delaware limited liability company, owns a coal-, natural gas- and oil-fired generating facility located in Anne Arundel County, Maryland. Wagner is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. Wagner is a

[9] *See* Joint Application, Exh. C-2 (depicting the current relationship between Riverstone and its affiliates in an organizational chart); *id.*, Exh. B-2 (listing in chart form the facilities owned or controlled by Riverstone's public utility affiliates).

wholly-owned, indirect subsidiary of Raven Power. (976 MW summer rating)

- **CP Crane,** a Delaware limited liability company, owns a coal- and oil-fired generating facility located in Baltimore County, Maryland. CP Crane is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. CP Crane is a wholly-owned subsidiary of Raven Marketing. (399 MW summer rating)
- **Raven Marketing** is a power marketer with market-based rate authority. Raven Marketing is a wholly-owned, indirect subsidiary of Raven Generation, a Delaware limited liability company.

ii. Subsidiaries of Sapphire Power Generation Holdings LLC (Sapphire Generation)

- **Bayonne,** a Delaware limited liability company, owns a natural gas- and distillate fuel oil-fired combined-cycle cogeneration facility in Bayonne, New Jersey. Bayonne is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, Bayonne has a reactive power tariff on file with the Commission. Bayonne is a wholly-owned, direct subsidiary of Sapphire Power Marketing LLC (Sapphire Marketing). (158 MW summer rating)
- **Camden,** a Delaware limited liability company, owns a natural gas- and distillate fuel oil-fired combined-cycle generating facility located in Camden, New Jersey. Camden is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, Camden has a reactive power tariff on file with the Commission. Camden is a wholly-owned direct subsidiary of Sapphire Marketing. (55 MW summer rating)
- **Dartmouth,** a Massachusetts limited partnership, owns a natural gas-fired, combined-cycle generating facility located in Dartmouth, Massachusetts. Dartmouth is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. Dartmouth is a wholly-owned, indirect subsidiary of Dartmouth Plant Holding, LLC, which is a wholly-owned direct subsidiary of Sapphire Marketing. (82.6 MW summer rating)
- **Elmwood Park,** a Delaware limited liability company, owns a natural gas- and fuel oil-fired, combined-cycle generating facility in Elmwood Park, New Jersey. Elmwood Park is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, Elmwood Park has a reactive power tariff with the Commission. Elmwood Park is a wholly-owned, direct subsidiary of Elmwood Energy Holdings, LLC, which is a wholly-owned, direct subsidiary of Sapphire Marketing. (64.9 MW summer rating)

- **Newark Bay,** a New Jersey limited partnership, owns a natural gas- and distillate fuel oil-fired combined-cycle generating facility located in Newark, New Jersey. Newark Bay is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, Newark Bay has a reactive power tariff on file with the Commission. Newark Bay is a wholly-owned, indirect subsidiary of Newark Bay Holding Company, L.L.C., which is a wholly-owned direct subsidiary of Sapphire Marketing. (120.2 MW summer rating)
- **Pedricktown,** a New Jersey limited partnership, owns a natural gas- and distillate fuel oil-fired combined-cycle generating facility located in Pedricktown, New Jersey. Pedricktown is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, Pedricktown is authorized to provide reactive supply and voltage control service under Schedule 2 of the PJM OATT. Pedricktown is a wholly-owned, indirect subsidiary of Sapphire Marketing. (117.9 MW summer rating)
- **York,** a Delaware limited liability company, owns a natural gas-fired combined-cycle generating facility located in York, Pennsylvania. York is an EWG that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. In addition, York has a reactive power tariff on file with the Commission. York is a wholly-owned, direct subsidiary of York Plant Holding, LLC, which is a wholly-owned, direct subsidiary of Sapphire Marketing. (48.5 MW summer rating)
- **Sapphire Marketing,** a Delaware limited liability company, is a power marketer with market-based rate authority. Sapphire Marketing is a wholly-owned, indirect subsidiary of Sapphire Generation, a Delaware limited liability company.

16. Applicants state that Raven Generation and Sapphire Generation are Delaware limited liability companies that are wholly-owned, direct subsidiaries of RJS Power LLC (RJS Power), a Delaware limited liability company. In turn, RJS Power is a wholly-owned, direct subsidiary of RJS Power Holdings LLC, a Delaware limited liability company and a wholly-owned direct subsidiary of RJS Generation Holdings LLC (RJS Generation), a Delaware limited liability company. Raven Power Holdings LLC (Raven Holdings), C/R Energy Jade, LLC (Jade Holdings) and Sapphire Power Holdings LLC (Sapphire Holdings and, together with Raven Holdings and Jade Holdings, RJS Holdings) own all of the membership interests in RJS Generation, with Raven Holdings being the majority interest owner. Sapphire Holdings has a less than 10 percent interest in RJS Generation. The management and operation of RJS Generation are governed entirely by a board of directors elected by Raven Holdings.

17. Applicants state that Raven Holdings, a Delaware limited liability company, is over 90 percent indirectly owned by investment vehicle affiliates of Riverstone Global

Energy and Power Fund V, L.P. (collectively, the Fund V Vehicles). The general partner and controlling entity of the Fund V Vehicles is Riverstone Energy Partners V, L.P., a Delaware limited partnership (Energy Partners V). The general partner and controlling entity of Energy Partners V is Riverstone Energy GP V, LLC, a Delaware limited liability company (GP 5 LLC), whose sole owner is Riverstone Energy GP V Corp., a Delaware Corporation (GP 5 Corp). Riverstone is the sole shareholder of GP 5 Corp.

18. Applicants state that Jade Holdings, a Delaware limited liability company, is over 90 percent owned by investment vehicle affiliates of Carlyle/Riverstone Global Energy and Power Fund III, L.P. (collectively, the Fund III Vehicles). The general partner and controlling entity of the Fund III Vehicles is Carlyle/Riverstone Energy Partners III, L.P. (Fund III GP). The general partner and controlling entity of Fund II GP is C/R Energy GP III, LLC (C/R GP LLC). Riverstone and Riverstone Investment Group LLC, a wholly-owned direct subsidiary of Riverstone, and TC Group Cayman Investment Holdings, L.P. and TC Group-Energy LLC (The Carlyle Group (Carlyle) entities), own all of the membership interests of C/R GP LLC. The management of Jade Holdings is controlled by its board of directors. Although both Riverstone and Carlyle have indirect interests in Jade Holdings, all of the board members of Jade Holdings are appointed by individuals designated by Riverstone to make such appointments.

19. Applicants state that Sapphire Holdings, a Delaware limited liability company, is over 90 percent indirectly owned by investment vehicle affiliates of Riverstone/Carlyle Renewable and Alternative Energy Fund, II-C, L.P. (collectively, Renew II Vehicles). The general partner and controlling entity of the Renew II Vehicles is Riverstone/Carlyle Renewable Energy Partners II, L.P., whose general partner and controlling entity is R/C Renewable Energy GP II, LLC (R/C GP LLC). The sole member of R/C GP LLC is Riverstone.

b. Other Riverstone Public Utility Affiliates

20. Applicants state that, in addition to the RJS Power Holdings Companies, the following entities are public utility affiliates of Riverstone. Applicants clarify that these entities are not part of the Proposed Transaction and will not be affected by it. They state that, because Riverstone affiliates will own 35 percent of Talen Energy as a result of the Proposed Transaction, these entities will be considered to be affiliated with Talen Energy under the Commission's regulations:

- Bottle Rock Power, LLC owns and operates a geothermal QF in Cobb, California;
- CSOLAR IV West, LLC is developing a solar project in El Centro, California that is expected to begin generating test power in the first quarter of 2015;

- Coastal Carolina Clean Power, LLC owns a biomass-fueled QF in Kenansville, North Carolina;
- Elizabethtown Energy, LLC (Elizabethtown) is an EWG that owns a bituminous coal-fired facility in Elizabethtown, North Carolina;
- Lumberton Energy, LLC (Lumberton) is an EWG that owns a bituminous coal-fired facility in Lumberton, North Carolina;
- Hatchet Ridge Wind, LLC is an EWG that owns a wind-powered generating facility in Burney, California;
- Imperial Valley Solar 1, LLC is an EWG that owns a solar photovoltaic power generating facility in Imperial Valley, California;
- Spring Valley Wind LLC is an EWG that owns a wind-powered generating facility in Spring Valley, Nevada;
- Ocotillo Express LLC is an EWG that owns a wind-powered generating facility in Imperial County, California;
- Tres Vaqueros Wind Farms, LLC owns a wind-powered generating facility QF in California's Altamont Pass;
- ReEnergy Black River LLC owns a biomass-fueled QF at the Fort Drum army base in Le Ray, New York;
- Lyonsdale, Biomass, LLC owns a wood fuel-fired QF in Lyons Falls, New York;
- ReEnergy Ashland LLC owns a biomass-fired QF in Ashland, Maine;
- ReEnergy Chateaugay LLC (Chateaugay) owns a biomass-fired QF in Chateaugay, New York;
- ReEnergy Fort Fairfield LLC owns a biomass-fired small power production facility in Fort Fairfield, Maine;
- ReEnergy Livermore Falls LLC owns a biomass-fired QF in Livermore Falls, Maine;
- ReEnergy Sterling CT Limited Partnership is an EWG that owns a waste tire-fueled generating facility in Sterling Connecticut;
- ReEnergy Stratton LLC owns a biomass-fired QF in Stratton, Maine; and
- TrailStone Power, LLC is a power marketer with market-based rate authority.

B. Proposed Transaction

21. Applicants state that they seek approval under section 203(a)(1) and, to the extent necessary, 203(a)(2), of the FPA for a multi-step transaction pursuant to which the interests in the PPL Energy Supply Companies and certain of their non-jurisdictional affiliates will be separated from PPL Corp., distributed to PPL Corp.'s shareowners, and combined with the RJS Power Holdings Companies and certain of their non-jurisdictional affiliates under a new company, Talen Energy. Applicants state that, at the close of the Proposed Transaction, Talen Energy will be 65 percent owned by PPL Corp.'s shareowners that are shareowners as of the record date of the Proposed Transaction and

35 percent owned by Riverstone affiliates. Applicants state that PPL Corp. will retain no interest in or affiliation with the PPL Energy Supply Companies after the Proposed Transaction closes. Applicants also propose mitigation and interim mitigation measures to address any competitive concerns.

22. Applicants describe the Proposed Transaction as involving the following main steps: (1) internal corporate reorganization of PPL Corp.; (2) separation of PPL Energy Supply from PPL Corp.; (3) internal reorganization of Talen Energy Holdings Inc. (Talen Energy Holdings); and (4) combination with the RJS Power Holdings Companies. Applicants state that these steps will take place close in time at closing, if not simultaneously.

1. Internal Corporate Reorganization of PPL Corp.

23. Applicants explain that, in the first step of the Proposed Transaction, PPL Energy Funding will distribute the membership interests of PPL Energy Supply to PPL Corp., making PPL Energy Supply a direct, wholly-owned subsidiary of PPL Corp. Next, PPL Corp. will contribute its equity interests in PPL Energy Supply to Talen Energy Holdings. This will result in PPL Energy Supply becoming a direct, wholly-owned subsidiary of Talen Energy Holdings and, thus, the PPL Energy Supply Companies will become indirect, wholly-owned subsidiaries of Talen Energy Holdings (the PPL Internal Reorganization).

24. Applicants state that the PPL Internal Reorganization will not affect the upstream ownership of PPL Corp.'s traditional public utility subsidiaries, PPL Electric, LG&E, and KU. Applicants state that, at the conclusion of the PPL Internal Reorganization, PPL Electric will remain a direct, wholly-owned subsidiary of PPL Corp., and LG&E and KU will remain indirect, wholly-owned subsidiaries of PPL Corp. Applicants state that they believe, therefore, that the PPL Internal Reorganization qualifies for blanket authorization under 18 C.F.R. § 33.1(c)(6) because it will not result "in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities."[10] Applicants state that, nevertheless, out of an abundance of caution, the PPL Energy Supply Companies seek, to the extent necessary, authorization under section 203(a)(1)(A)[11] for the upstream change in their

[10] Joint Application at 28 (quoting 18 C.F.R. § 33.1(c)(6) (2014)).

[11] Joint Application at 28 & n.94 (citing 16 U.S.C. § 824b(a)(1)(A) (requiring a public utility to obtain prior authorization to "sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission"); *Phelps Dodge Corp.*, 121 FERC ¶ 61,251, at P 15 (2007) (interpreting "otherwise dispose of" language

(continued...)

ownership resulting from the PPL Internal Reorganization, and PPL Corp. seeks, to the extent necessary, authorization under section 203(a)(2)[12] for the transfer of PPL Energy Supply and the PPL Energy Supply Companies from PPL Energy Funding to PPL Corp.

2. Separation of PPL Energy Supply from PPL Corp.

25. Applicants state that, after the PPL Internal Reorganization, PPL Corp. will distribute its stock in Talen Energy Holdings to its shareowners on a *pro rata* basis, resulting in the separation of PPL Corp. and its Commission-jurisdictional traditional and transmission-owning utility subsidiaries, PPL Electric, LG&E, KU, and EEInc., on the one hand, from PPL Energy Supply and the PPL Energy Supply Companies, on the other hand (the Separation). Accordingly, Applicants assert that, after completion of the Separation and from that point forward, PPL Corp., PPL Electric, LG&E, KU, and EEInc. will not have any ongoing ownership interest, control or affiliation with the PPL Energy Supply Companies. Accordingly, Applicants state that the PPL Energy Supply Companies seek authorization under section 203(a)(1)(A) for the indirect transfer of control of their jurisdictional facilities through the upstream change in ownership resulting from the Separation.

26. Applicants assert that, in connection with the Separation, there will be a need for certain clarifications of property rights at sites where PPL Electric's and the PPL Energy Supply Companies' facilities are co-located, as well as potential expansions of existing rights-of-way and access rights. Applicants state that PPL Electric and the PPL Energy Supply Companies do not believe that the co-located facilities that may be affected by the Separation are subject to the Commission's jurisdiction under section 203(a)(1)(A) because of their nature or value. Applicants add that the Pennsylvania Commission will also approve, as necessary, any incidental division or transfer of property at sites where facilities are co-located. Nevertheless, to the extent the Commission determines approval is required under section 203(a)(1)(A), Applicants (specifically PPL Corp.) request that PPL Electric be treated as an Applicant for the sole purpose of such incidental transfers of property.

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of section 203(a)(1)(A) to include the indirect transfer of control of jurisdictional facilities through the upstream change in ownership of those facilities)).

[12] Joint Application at 29 & n.95 (citing 16 U.S.C. § 824b(a)(2) (requiring a "holding company in a holding company system that includes a transmitting utility or an electric utility" to obtain prior authorization before it "purchase[s], acquire[s], or take[s] any security with a value in excess of $10,000,000 of, or by any means whatsoever . . . merge[s] or consolidate[s] with . . . an electric utility company, or a holding company in a holding company system that includes . . . an electric utility company.")).

3. Internal Corporate Reorganization of Talen Energy Holdings

27. Applicants state that contemporaneously with or shortly following the Separation, Talen Energy Holdings, Talen Energy, and Talen Energy Merger Sub, Inc. (Talen Energy Merger Sub) will undertake an internal reorganization that will result in Talen Energy becoming the direct parent to Talen Energy Holdings and Talen Energy Merger Sub being merged into Talen Energy Holdings (the Talen Internal Reorganization). More specifically, Talen Energy Merger Sub, a direct, wholly-owned subsidiary of Talen Energy and an indirect, wholly-owned subsidiary of Talen Energy Holdings, will merge with and into Talen Energy Holdings. Applicants explain that, also in connection with the Talen Internal Reorganization, Talen Energy Holdings will survive as the direct, wholly-owned subsidiary of Talen Energy and the direct parent of PPL Energy Supply. Applicants state that Talen Energy Holdings common stock will be converted into Talen Energy common stock. According to Applicants, the PPL Energy Supply Companies will become indirect, wholly-owned subsidiaries of Talen Energy, a new stand-alone, publicly-traded independent power producer.

4. Combination with the RJS Power Holdings Companies

28. Applicants explain that, in the final step of the Proposed Transaction, RJS Holdings will contribute 100 percent of the membership interests in an entity that indirectly owns the RJS Power Holdings Companies, which could be RJS Generation, RJS Power Holdings, or such new entity – the RJS Holdco – to Talen Energy in exchange for 35 percent, in the aggregate, of the common stock of Talen Energy. Applicants state that the Talen Energy common stock will be held directly by RJS Holdings or by a special purpose entity wholly-owned by RJS Holdings and controlled by Raven Holdings. Applicants state that this contribution will result in the RJS Power Holdings Companies becoming indirect, wholly-owned subsidiaries of Talen Energy. Talen Energy will contribute the interests in RJS HoldCo to its direct, wholly-owned subsidiary, Talen Energy Holdings. Talen Energy Holdings will, in turn, contribute the interests in RJS HoldCo to PPL Energy Supply or will cause RJS HoldCo to be merged with and into PPL Energy Supply, with PPL Energy Supply as the surviving company in the merger. Applicants state that, as a result, the RJS Power Holdings Companies and the PPL Energy Supply Companies will become indirect, wholly-owned subsidiaries of Talen Energy.

29. Applicants state that the RJS Power Holdings Companies seek authorization under section 203(a)(1)(A) for the indirect transfer of control of their jurisdictional facilities through the upstream change in ownership of the RJS Power Holdings Companies, described above.

II. Notice of Filing and Responsive Pleadings

30. Notice of the July 15, 2104 Joint Application was published in the *Federal Register*, 79 Fed. Reg. 42,784 (2014), with interventions and comments or protests due on or before September 15, 2014.

31. Notice of the August 29, 2014 Supplement was published in the *Federal Register*, 79 Fed. Reg. 53,700 (2014), with comments due on or before September 19, 2014.

32. The Pennsylvania Commission and the Pennsylvania Office of Consumer Advocate each filed a timely motion to intervene.[13] MEG Holdings, Inc. (MEG Holdings) filed a timely motion to intervene on September 11, 2014 and timely comments on September 14, 2014. The Independent Market Monitor for PJM (Market Monitor) filed a timely motion to intervene and comments, and submitted corrections to those comments on September 19, 2014. On September 16, 2014, FirstEnergy Service Company (FirstEnergy) filed a motion to intervene out-of-time. On October 6, 2014, Applicants filed a motion for leave to answer and answer (Applicants' Answer). On October 24, 2014, the Market Monitor filed a motion for leave to answer and answer (Market Monitor's Response).

III. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[14] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.[15]

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[13] Allegheny Electric Cooperative, Inc. (Allegheny Cooperative) filed a timely motion to intervene and protest, followed by an October 14, 2014 motion to withdraw from this proceeding.

[14] 18 C.F.R. § 385.214 (2014).

[15] Allegheny Cooperative is not a party to this proceeding. 18 C.F.R. § 385.216(b) (2014) ("The withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period."). *See supra* n.13.

34. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[16] the Commission will grant FirstEnergy's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[17] prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Applicants' Answer and the Market Monitor's Response because they have provided information that assisted us in our decision-making process.

B. Standard of Review Under Section 203

35. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.[18] The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[19] Section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[20] The Commission's regulations establish verification and informational requirements for entities that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.[21]

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[16] 18 C.F.R. § 385.214(d) (2014).

[17] 18 C.F.R. § 385.213(a)(2) (2014).

[18] 16 U.S.C. § 824b(a)(4) (2012). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authority before the Proposed Transaction may be consummated. *See* Joint Application at 68. Our findings under FPA section 203 do not affect those agencies' evaluation pursuant to their respective statutory authority.

[19] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

[20] 16 U.S.C. § 824b(a)(4) (2012).

[21] 18 C.F.R. § 33.2(j) (2014).

C. Analysis Under Section 203

1. Effect on Horizontal Competition

a. Applicants' Analysis

36. Applicants state that with the mitigation measures described below, the Proposed Transaction will not result in an increase in horizontal market power.[22] Applicants explain that they engaged Julie R. Solomon of Navigant Consulting to analyze the competitive impacts of the Proposed Transaction. Applicants state that Ms. Solomon first determined how much generation PPL Energy Supply and affiliates of Riverstone each own or control in each potentially relevant geographic market. Applicants explain that PPL Energy Supply and RJS Power Holdings have overlapping generation in only two markets, PJM and ISO-NE, and the primary generation overlap occurs in PJM. Applicants state that RJS Power Holdings owns or controls only 83 MW and PPL Energy Supply owns or controls only 4 MW in ISO-NE. Consequently, post-transaction, their combined market share will be less than 1 percent in ISO-NE. Applicants assert that because the extent of Applicants' business transactions involving ISO-NE is *de minimis*, no competitive analysis is required for that market.[23] Applicants assert that PPL Energy Supply Companies and the RJS Power Holdings Companies do not have overlapping generation in any other market.

37. Applicants state that the key relevant geographic markets potentially affected by the Proposed Transaction are therefore PJM and the PJM submarkets previously deemed relevant by the Commission: 5004/5005; AP South; and PJM East.[24] Applicants state

[22] Joint Application at 34.

[23] *Id*. at 35 & n.113 (citing 18 C.F.R. § 33.2(a)(2)(i) (2014)).

[24] For definition of submarkets in PJM, *see Exelon Corp*., 138 FERC ¶ 61,167, at P 26 & nn.19-20 (2012) (explaining that the AP South submarket, as defined by the constrained AP South interface, consists of the following 500 kilovolt (kV) lines: Mt. Storm-Doubs, Greenland Gap-Meadowbrook, Mt. Storm-Valley, and Mt. Storm-Meadowbrook. The AP South submarket consists of the following transmission zones: Atlantic City Electric Company, BGE, Dominion Resources, Delmarva Power & Light, Jersey Central Power & Light, Metropolitan Edison, PECO, Potomac Electric Company, PPL Electric, Public Service Electric & Gas, and Rockland Electric Company. The 5004/5005 constraint is defined by the Keystone-Juniata 5004 line and the Conemaugh-Juniata 5005 line. The 5004/5005 submarket largely overlaps the AP South submarket but does not include the Dominion Transmission Zone.).

that all of the generation owned by RJS Power Holdings and the vast majority of the generation owned or controlled by PPL Energy Supply is located in the PJM East or 5004/5005 submarkets.

38. Applicants state that Ms. Solomon performed an "Appendix A" analysis or Competitive Analysis Screen (otherwise referred to as the delivered price test), as required by section 33.3 of the Commission's regulations,[25] in PJM and its relevant submarkets. Applicants state that Ms. Solomon's analysis focused primarily on Economic Capacity. Applicants assert that, in the 5004/5005 submarket, where all states have implemented retail competition, Available Economic Capacity, which measures capacity available after load obligations are met, is less relevant.[26] Applicants state that, nevertheless, Ms. Solomon performed an Available Economic Capacity competitive analysis, as required by the Commission's regulations. Applicants state that Ms. Solomon also analyzed relevant capacity and ancillary services markets in PJM.

i. Analysis of PJM Energy Markets

39. Applicants state that, while Ms. Solomon analyzed all previously-examined submarkets in which there is an overlap, she noted that "submarkets are not static. Market conditions (generation, load patterns, and transmission) change, including specific changes in response to such constraints (e.g., transmission upgrades)."[27] According to Ms. Solomon, constraints on the AP South interface have increased, whereas constraints on the PJM East interface "are not nearly as significant as they have been historically" and constraints have "declined significantly" in recent years in the 5004/5005 submarket.[28] Ms. Solomon concludes that the "historical congestion data suggest that the PJM East and 5004/5005 submarkets may be of relatively lesser relevance" in the context of analyzing the Proposed Transaction.[29] Ms. Solomon adds that PJM's Regional Transmission Expansion Plan process contains a number of

[25] Joint Application at 36 & n.115 (citing 18 C.F.R. § 33.3 (2014)).

[26] *Id*. at 36 & n.116 (citing Solomon Aff. at 30-31).

[27] *Id*. at 37 & n.117 (quoting Solomon Aff. at 20).

[28] *Id*. at 37 & nn.118-119 (quoting Solomon Aff. at 20).

[29] *Id*. at 37 & n.120 (quoting Solomon Aff. at 20).

transmission projects that will effectively eliminate congestion at the 5004/5005 interface.[30]

40. Ms. Solomon concludes that the Proposed Transaction easily passes the delivered price test in PJM in all time periods under Economic Capacity and Available Economic Capacity measures, with results well within the Commission's guidelines. Applicants state that the market is unconcentrated, and the changes in the Herfindahl-Hirschman Index (HHI)[31] are below 20 points under the Economic Capacity measure. Applicants add that the results of Ms. Solomon's price sensitivity analyses are not significantly different than the base case results.[32]

41. Similarly, Applicants explain that Ms. Solomon conducted a delivered price test analysis for the PJM East which is passed in all time periods for Economic Capacity and Available Economic Capacity. Ms. Solomon concludes that the PJM East submarket is at most moderately concentrated, and the HHI changes are less than 50 points, relative to a 100-point threshold under the Economic Capacity measure. Applicants state that Talen Energy's post-transaction market share in PJM East will be less than 10 percent. Applicants point out that Ms. Solomon further concludes that the AP South submarket is moderately concentrated, and the HHI changes are less than the 100-point threshold for Economic Capacity. Applicants state that Talen Energy's post-transaction market share

[30] *Id.* at 37 & n.121 (citing Solomon Aff. at 20-21).

[31] The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered to be unconcentrated; markets in which the HHI is greater than or equal to 1,000 but less than 1,800 points are considered to be moderately concentrated; and markets in which the HHI is greater than or equal to 1,800 points are considered to be highly concentrated. In a horizontal merger, an increase of more than 50 HHI points in a highly concentrated market or an increase of 100 HHI points in a moderately concentrated market fails the relevant screen and warrants further review. Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,129; *see also Analysis of Horizontal Market Power under the Federal Power Act, order reaffirming commission policy and terminating proceeding,* 138 FERC ¶ 61,109 (2012) (affirming the Commission's use of the thresholds adopted in the Merger Policy Statement) (*Order reaffirming commission policy*).

[32] Ms. Solomon conducted sensitivity analyses by increasing and decreasing prices by 10 percent from the base case.

in AP South is equal to or less than 15 percent. Applicants state that the results of Ms. Solomon's delivered price tests for the price sensitivity cases are similar, and Applicants pass the delivered price tests for Economic Capacity in PJM East and AP South under these different price assumptions.

42. Applicants state that Ms. Solomon's analysis indicates that the delivered price test in the 5004/5005 submarket results in HHI changes that slightly exceed the 100-point threshold in a moderately concentrated market for Economic Capacity, ranging from 129-150 points. Applicants highlight, however, that they have committed to a mitigation plan that Ms. Solomon determines fully eliminates these screen failures through the divestiture of generation.

ii. Mitigation Proposal

43. Applicants state that they have committed to a mitigation plan that consists of two alternative divestiture options (Option 1 and Option 2), comprising two sets of generating plants. They state that each of these options is independently designed to fully mitigate any concerns raised by the Proposed Transaction and eliminate the screen failures identified by Ms. Solomon in the PJM 5004/5005 submarket.[33] Applicants explain that both options call for divestiture to a third party of a subset of the assets, totaling approximately 1,300 MW, which would otherwise be part of Talen Energy after the Proposed Transaction closes.[34] Under Option 1, the Ironwood, Bayonne, Camden, Elmwood Park, Newark Bay, Pedricktown, and York plants would be divested and sold to a third party.[35] Under Option 2, the CP Crane, Holtwood, Bayonne, Camden, Elmwood Park, Newark Bay, Pedricktown, York, and Wallenpaupack plants would be divested and sold to a third party.[36]

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[33] Joint Application at 39.

[34] *Id*.

[35] *Id*., Exh. E (listing units). Applicants explain that the proposed divestiture plan is to offer the Option 1 units in at least two bundles, consisting of the following: (1) the Sapphire Units (Bayonne, Camden, Elmwood Park, Newark Bay, Pedricktown, and York); and (2) the PPL Ironwood facility. *Id*. at 40.

[36] *Id*., Exh. F. Applicants state that the proposed divestiture is to offer the Option 2 units in at least three bundles, consisting of the following: (1) the Sapphire Units; (2) the CP Crane facility; and (3) the PPL Holtwood and Wallenpaupack facilities. *Id.* at 40.

44. Table 1: Divestiture Options[37]

Option 1				Option 2		
Divestiture Units	**MW**	**Type [Technology]**		**Divestiture Units**	**MW**	**Type [Technology]**
Bayonne	158	Combined Cycle		Bayonne	158	Combined Cycle
Camden	145	Combined Cycle		Camden	145	Combined Cycle
Elmwood Park	65	Combined Cycle		Elmwood Park	65	Combined Cycle
Newark Bay	120	Combined Cycle		Newark Bay	120	Combined Cycle
Pedricktown	118	Combined Cycle		Pedricktown	118	Combined Cycle
York	49	Combined Cycle		York	49	Combined Cycle
PPL Ironwood	660	Combined Cycle		PPL Holtwood	248	Hydro
Total MW	1,315			Wallenpaupack	44	Hydro
				CP Crane	399	Coal
				Total MW	1,346	

45. Applicants explain that the units in each of these options were selected in consideration of the location, total megawatts (MWs), and type of generation needed to eliminate the 5004/5005 screen failures. They state that all of the generation consists of coal, hydro, or combined cycle generation. Applicants commit not to sell these generation units to market participants owning more than 10 percent of the installed capacity in the 5004/5005 submarket in PJM.[38]

46. Applicants state that they commit that Talen Energy will enter into a contract or contracts for divestiture of the assets under one of the two options within one year of a Commission order approving the Proposed Transaction. Applicants further commit to place all the generation to be divested in both Option 1 and Option 2 under the direct and

[37] Joint Application at 40.

[38] For the list of the entities Applicants have identified as ineligible buyers, *see infr*a P 49.

independent contractual control of a third party manager who will control the output of the generation and bid all energy and ancillary services from these units until such time as the divestiture is completed.[39] The third party manager will be paid a management fee with performance incentives in order to maximize revenue in excess of what the units would receive if bid at cost. The third party manager will be responsible for dispatching the assets, providing notice to PJM of any unplanned outages or other changes in availability and procuring fuel supply for the units.[40]

47. Applicants point out that Ms. Solomon concludes that either the Option 1 or Option 2 divestiture plan would fully eliminate the screen failures in the 5004/5005 submarket. They state that the screens are also passed in the price sensitivity analyses.

48. Applicants highlight the fact that, in her post-mitigation delivered price test analysis, Ms. Solomon assumes that all the plants in either Option 1 or Option 2 will be divested to a single new entrant, although multiple buyers could purchase the plants, as long as all of the plants in the option selected are sold. Ms. Solomon states that, to ensure that the proposed mitigation eliminates post-transaction screen failures, "excluded" buyers that own more than 10 percent of the total installed capacity (based on summer ratings) in the 5004/5005 submarket have been identified. Applicants state that all other entities that do not now have significant ownership or control of generation within the 5004/5005 submarket are eligible buyers for at least one of the bundles that will be divested. Applicants state that, with this commitment, Ms. Solomon concludes that the screen results for Economic Capacity in all the relevant PJM markets (PJM, PJM East, AP South, and 5004/5005) will remain within the limits identified by the Commission that do not require further inquiry.

49. Applicants state that only three market participants have been identified as ineligible under these conditions: affiliates of Public Service Enterprise Group Incorporated (PSEG), Exelon Corporation (Exelon), and NRG Energy, Inc. (NRG Energy).[41] Applicants state that all other buyers could acquire one bundle and almost all other buyers theoretically could acquire more than one of the bundles without causing any Economic Capacity screen failures, depending on who the other buyers are. Applicants state that, taking into consideration the proposed mitigation and the commitment to limit certain ineligible buyers, the delivered price tests for Economic

[39] Joint Application at 46.

[40] *Id*.

[41] *Id*. at 40.

Capacity in all relevant markets are passed, demonstrating the lack of adverse competitive impact.

50. Applicants assert that approval of the Proposed Transaction, subject to either of the two alternative divestiture options, as well as a one-year period to enter into a contract or contracts for divestiture of the assets, is appropriate because "the optionality will provide a means to address the volatility and uncertainties that currently exist in the market for generating assets."[42] For example, Applicants explain that changes in the price of natural gas relative to that of other fuels and the cost of compliance with environmental regulations may significantly affect how the market values particular assets. They assert that the options they propose will allow the market more flexibility to identify the assets more highly valued by potential purchasers, thereby facilitating their sales. Applicants assert that, under these circumstances, Applicants may not know which option will be selected until all of the sales for a particular option are under contract. Applicants state that promptly following the execution of purchase and sale agreements for all assets within one of the two options, Applicants will inform the Commission which option has been selected, and the buyers of the assets. Applicants note that the Commission will have the opportunity to review the divestitures when Talen Energy and the purchasers of the divested assets file applications under section 203 of the FPA.[43]

51. Applicants state that, although the primary focus of Ms. Solomon's analysis of the PJM market is on Economic Capacity, Ms. Solomon also performed an Available Economic Capacity analysis for the PJM 5004/5005 submarket, notwithstanding the fact that all of the states in the 5004/5005 submarket have implemented retail choice.[44] Applicants state that Ms. Solomon's analysis indicates that, after either proposed mitigation option is taken into account, the Proposed Transaction does not raise Available Economic Capacity market power concerns in the 5004/5005 or PJM East submarkets. Applicants state that the screens for Available Economic Capacity are passed in the relevant markets, at base case prices and under the price sensitivities when the proposed mitigation is reflected in the analysis, with one minor exception. Applicants state that the

[42] *Id*. at 42.

[43] *Id*.

[44] *Id*. at 42-43 & n.42 (citing Solomon Aff. at 3-31). Applicants note the difficulty of measuring load obligations of third parties who have divested their generation to an entity that makes all of its sales in the wholesale market, in particular, the difficulty of matching specific generation unit to specific loads. Thus, Applicants acknowledge that the Available Economic Capacity calculations do not have the same degree of precision as the Economic Capacity calculations. *Id*.

minor exception is "a few super peak 1 periods"[45] for the 5004/5005 submarket when the HHI changes are slightly above 100 points, ranging from 110-121, and the market HHIs are slightly above 1,000 points ranging from 1,041-1,052.[46] Applicants point out that Ms. Solomon concludes that "[t]his clearly is not indicative of a systematic concern."[47]

iii. Analysis of PJM Capacity Markets

52. Applicants state that Ms. Solomon also concludes that the Proposed Transaction does not have an adverse effect on capacity markets in PJM. Applicants explain that in the most recent Base Residual Auction for the 2017/2018 Delivery Year, the Reliability Pricing Model (RPM) market cleared regional transmission organization (RTO)-wide, except for a small portion of Northern New Jersey where there is no capacity market overlap between PPL Energy Supply and the Riverstone affiliates. Applicants state that in the RTO-wide RPM market, the effect of the Proposed Transaction is small. Even before mitigation, the merger-related HHI change is 17 points. After mitigation, the merger-related HHI change is 9. Applicants state that this indicates a lack of competitive concern.

53. Applicants add that Ms. Solomon also analyzes the Mid-Atlantic Area Council (MAAC) local deliverability area, which cleared at separate, higher prices from the RTO-wide market in the Base Residual Auction for the 2016/2017 Delivery Year. Applicants point out that Ms. Solomon concludes that, with either proposed mitigation option, the HHI changes are 55-56 points in a market that is, at most, moderately concentrated. Applicants state that, therefore, the Commission's competitive screen is passed in the RTO-wide RPM market, and no competitive concerns are present, even if MAAC should become a relevant market in the future.

iv. Ancillary Services Analysis

54. Applicants state that Ms. Solomon concludes that the Proposed Transaction does not raise competitive concerns in any relevant ancillary services market in PJM. Ms. Solomon notes that PJM's only market-based ancillary services markets are its regulation, primary reserve (synchronized reserve and non-synchronized reserves that can

[45] Applicants' super peak 1 period is representative of the top load hour for PJM during June, July or August.

[46] Joint Application at 43.

[47] *Id*. The tables showing the results of Ms. Solomon's Available Economic Capacity analyses are shown in Exh. J-9 to the Solomon Aff.

respond within 10 minutes), and day-ahead scheduling reserve markets. Ms. Solomon states that her analyses of these markets demonstrates that the Proposed Transaction does not raise market power concerns, with both PPL Energy Supply and Riverstone affiliates being minor participants in these markets.

v. Interim Mitigation

55. Applicants note that, in the past, the Commission has required merger applicants to put interim mitigation measures in place from the time the merger is consummated until the required divestitures and other mitigation are in place.[48] Applicants therefore commit to the interim mitigation outlined below during the period after the Proposed Transaction is consummated until the divestitures in either proposed mitigation option have been completed.

56. Applicants explain that their interim mitigation commitment is to place *all* of the generation being considered for divestiture in *both* Option 1 and Option 2 (approximately 2,000 MW of generation) (Mitigated Assets) into what will be, in effect, a blind trust. They make this commitment even though they propose to permanently divest only about 1,300 MW under either Option 1 or Option 2. Applicants state that, under their interim mitigation proposal, an unaffiliated third party (Independent Energy Manager) will control the output of the Mitigated Assets and offer all energy and ancillary services from these units until such time as the generation divestitures are completed. Applicants state that this proposal is consistent with mitigation that the Commission has previously suggested is adequate and addresses concerns previously raised by the Commission to ensure that "control" has adequately been transferred to a third party.[49] Applicants assert that any ability or incentive to exercise market power with respect to the Mitigated Assets will be eliminated because Talen Energy and its affiliates will have neither operational nor commercial control over the Mitigated Assets operated by the Independent Energy Manager. Additionally, they state that the Independent Energy Manager will also lack an ability or incentive for economic withholding because it will control at most a limited

[48] *Id*. at 45 (citing, *inter alia*, *Exelon Corp*., 138 FERC ¶ 61,167).

[49] *Id*. at 45 & nn.146-47 (citing *Bluegrass Generation Co., L.L.C.*, 139 FERC ¶ 61,094, at P 21 (2012) (suggesting exploration of mitigation such as relinquishing operational control or selling a portion of output under a long-term contract); *MACH Gen, LLC*, 142 FERC ¶ 61,178, at PP 29-31 (2013) (stating Commission evaluates factors such as whether a management agreement conveys unlimited discretion and control to the manager, which party establishes operating limits and dispatch and efficiency curves and whether owner and other market participants will have similar access to market information)).

amount of generation in the relevant PJM markets (the Mitigated Assets and whatever small amounts of generation it may control in PJM). Applicants commit to apply eligibility restrictions for the Independent Energy Manager at least as stringent as the buyer restrictions for the permanent divestitures. Applicants state that no entity owning, controlling, or managing more than 5,000 MW of generation in the 5004/5005 submarket, including the Mitigated Assets, will be eligible to be the Independent Energy Manager.

57. Applicants state that Talen Energy and the Independent Energy Manager will enter into an agreement pursuant to which the Independent Energy Manager will have all of the rights to bid or offer the Mitigated Assets into the relevant PJM energy and ancillary services markets and the opportunity to capture market value through forward energy sales, unit offer strategies, and/or fuel procurement strategies. Applicants state that the Independent Energy Manager will also be responsible for, among other things, all dispatch of the Mitigated Assets, notifications to PJM of unplanned outages or other changes in availability, and providing fuel supply to the Mitigated Assets consistent with particular units' fuel supply requirements and existing supply arrangements. Applicants explain that the Independent Energy Manager will be paid on the basis of a management fee with performance incentives. Applicants assert that the performance incentives will reward the Independent Energy Manager for obtaining additional revenue above what the Mitigated Assets would have received if they were bid at cost in the day-ahead market. Applicants state that the performance incentive will thus reflect the Independent Energy Manager's success at identifying and capturing additional market value for the Mitigated Assets through forward energy sales, unit offer strategies, and/or fuel supply procurement strategies. Applicants add that, while the Independent Energy Manager may earn performance incentives, the Independent Energy Manager will act as a profit maximizer only with respect to a limited generation portfolio, that is, the Mitigated Assets and whatever small amounts of other generation it may control in PJM. They further acknowledge that, although Talen Energy may earn some revenues from the Independent Energy Manager's profitable operation of these units, Talen Energy itself will act as a profit maximizer only with respect to its remaining (permanent) generation portfolio.[50]

58. Included with the Joint Application is a term sheet setting forth the operative provisions of the agreement between Talen Energy and the Independent Energy Manager (IEM Term Sheet).[51] Applicants state that they contemplate that a more comprehensive agreement with full commercial terms will be negotiated once the Independent Energy Manager has been selected. Applicants state that any such agreement will be submitted

[50] *Id*. at 48.

[51] *See* Joint Application, Attachment 3.

to the Commission for approval within 30 days of the issuance of a Commission order authorizing the Proposed Transaction.

59. Applicants clarify that, although the Independent Energy Manager will have full operational control to schedule and dispatch the Mitigated Assets, because the generation fleet will continue to be owned by Talen Energy, maintenance (that is, planned outages) will be coordinated with maintenance schedules for other Talen Energy generation. Applicants state that Talen Energy and the Independent Energy Manager will agree on any changes to planned outages that are currently scheduled for the Mitigated Assets and, from time-to-time as necessary, Talen Energy may communicate certain unit availability limitations to the Independent Energy Manager. Applicants state that as shown in the Form of Unit Cost Sheets for Cost-Based Offers included with the IEM Term Sheet, Talen Energy and the Independent Energy Manager will agree to certain unit dispatch parameters related to limitations, such as emissions allowances or other factors that may limit the frequency of unit operation.

60. Applicants assert that Talen Energy's physical operation of the Mitigated Assets will provide it with neither the incentive nor ability to withhold the assets from the PJM market. Applicants state that any maintenance outages will be planned well in advance and coordinated with both the Independent Energy Manager and PJM. Applicants add that there is no incentive for Talen Energy to call any unnecessary forced outages in light of the potential impact on a unit's equivalent forced outage rate and its qualification for full capacity payments. They add that calling unnecessary forced outages would also be inconsistent with Talen Energy's interest in maintaining the value of the facilities to facilitate their sale.

61. Applicants reiterate that the proposed interim mitigation proposal will also prevent Talen Energy from being able to engage in economic withholding of the Mitigated Assets because Talen Energy will not be able to bid or offer the Mitigated Assets. Moreover, Applicants state that, because the Independent Energy Manager will control at most a limited amount of generation in the relevant PJM markets, it too will lack any ability or incentive for economic withholding.

62. Applicants state that Talen Energy will not have access to any confidential market information with respect to the Independent Energy Manager's operation of the Mitigated Assets. Applicants state that information exchanges will be limited to those necessary to manage outages, fuel inventory, deliveries, and compliance with environmental and other laws and regulations. Applicants state that Talen Energy marketing and trading personnel will not be involved in those information exchanges, which will be limited to the operating and regulatory compliance personnel necessary to convey or respond to the required information. Applicants state that the Independent Energy Manager will maintain its own accounts and/or subaccounts with PJM for the Mitigated Assets, and Talen Energy and the Independent Energy Manager will not have access to each other's PJM accounts or subaccounts. Applicants state that although accounts between Talen

Energy and the Independent Energy Manager for the management fee and performance incentive will be settled monthly, no detailed accounting of unit profitability, bids, dispatch, energy, or ancillary services revenues will be provided to Talen Energy in any manner that will convey competitively sensitive information. Applicants state that, to ensure this, the Applicants propose the appointment of an independent monitor to review all information exchanged between Talen Energy and the Independent Energy Manager.[52]

63. Applicants assert that the proposed interim mitigation is appropriate because of the Proposed Transaction's unique nature and the very limited and likely short-term nature of the horizontal competitive analysis screen failures. In this regard, Applicants emphasize that the Proposed Transaction involves the separation of competitive generation assets from regulated transmission and distribution assets – a separation that will be in effect at the same time the interim mitigation goes into effect. Applicants state that this has not been the case in other merger transactions in which the Commission has ordered interim mitigation.[53] Applicants state that this means that the Commission will not need to rely only on regulatory protections to prevent discriminatory conduct and cross-subsidization. Applicants further note that the only screen failures occur in the 5004/5005 submarket at the lower end of the moderately concentrated range, and that none of the unmitigated screen failures exceed the Commission's threshold by more than 50 points. Given the limited nature of these screen failures, Applicants assert that any interim mitigation adopted will not result in unnecessary over-mitigation that would have distortive effects on the market. Applicants state that, for example, forms of interim mitigation that the Commission has required in other transactions, such as cost-based bidding for all generation involved in the transaction, would, if applied in this case, result in inaccurate price signals that may affect investment and supply or consumption decisions of other market participants. In contrast, Applicants state that the interim mitigation Applicants propose will result in more accurate price signals based on market fundamentals because the Independent Energy Manager will have the incentive to evaluate properly market fundamentals and submit offers that obtain the best value for the Mitigated Assets' energy and ancillary services. Applicants state that more accurate price signals from a profit-maximizing entity like the Independent Energy Manager are particularly important in light of the volatility and uncertainties in energy markets caused by factors such as the cost and availability of natural gas.[54]

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[52] *Id*. at 49.

[53] *Id*.

[54] *Id*. at 50.

64. Furthermore, Applicants state that there is ample evidence that the market definition that caused the screen failures here may no longer exist and very likely will no longer exist by the time permanent mitigation is completed. They reiterate that the constraints that have resulted in the creation of the 5004/5005 submarket are not as significant as they have been in the past. Applicants state that recent PJM transmission upgrades have increased the reactive limits such that PJM is predicting zero dollars of congestion resulting from the 5004/5005 constraint by 2017. Applicants state that, although Applicants are nonetheless willing to commit to permanent mitigation, the type of interim mitigation that the Commission has required in the past – placing all of the applicants' generation in the relevant market under cost-based bid caps – would be excessive in light of the uncertainty that such relief is necessary to protect consumers pending the divestitures.[55]

65. Applicants add that, in light of the foregoing, the proposed interim mitigation also avoids unnecessary distortive effects on the market by limiting the interim mitigation to the Mitigated Assets, not the entire Talen Energy generation fleet in the 5004/5005 submarket. Applicants state that requiring Applicants to place all of their generating assets in the 5004/5005 submarket under cost-based offers, when the divestiture required to clear all horizontal competitive analysis screen failures is barely more than 10 percent of the combined fleet in the submarket, would be an "overly blunt and imprecise form of relief."[56] Applicants assert that not only would such a requirement be unjustified and unfair but it would also cause harm to the markets that easily exceeds any benefits it would provide. Applicants state that the purpose of interim mitigation is to protect markets from the artificial anticompetitive effects that could result from a merger while the required permanent relief is in the process of being implemented. Applicants state that their interim mitigation proposal provides just such protection. Applicants argue that, under their mitigation proposal, energy and ancillary service market offers will be competitive and not artificially constrained by administratively-set costs.

66. Applicants assert that because the Mitigated Assets include more capacity than is necessary to eliminate the screen failures, Applicants' interim mitigation proposal preserves competitive and efficient market outcomes pending the completion of the divestiture. Applicants add that because the screen failures leading to divestiture are limited and in a market that is clearly declining in significance, the proposed interim mitigation is uniquely appropriate for this Proposed Transaction.

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[55] *Id*. at 50-51.

[56] *Id.* at 51.

b. PJM Market Monitor Comments

67. The Market Monitor submitted an alternative analysis and comments in the form of a report (Market Monitor's Report) that is based on market structure metrics that the Market Monitor examined in order to quantify the expected impact of the Proposed Transaction on the market structure of constraint-defined markets within PJM.[57] Based on this analysis, the Market Monitor asserts that the Proposed Transaction would have the following impacts: significantly increase concentration in specific, highly concentrated locational energy markets; increase concentration in portions of the capacity market; and minimally affect the market for regulation.

68. The Market Monitor asserts that Applicants' proposed divestiture-based mitigation proposals outlined in Option 1 and Option 2 scenarios have a mixed effect on the post-transaction market structure of the affected markets. The Market Monitor states that, in some of the relevant markets,[58] the Option 1 and Option 2 proposals actually improve the

[57] The Market Monitor states that its analysis is based on actual operation of the PJM wholesale power markets, rather than approximations of seasonal geographic markets that do not take into account local transmission constraints, distribution factors and relative load dispatch costs. The Market Monitor states that the information used to prepare the analysis is "highly confidential and market sensitive as it relates to specific market participants." Market Monitor's September 19, 2014 Corrected Comments at 1 (submitting Market Monitor's Report).

[58] Stressing the importance of an accurate definition of the relevant markets, which in turn depends on appropriately identifying and evaluating potential substitutes for a given product, *see id.* at 4, the Market Monitor explained its method for defining the relevant markets as follows:

> Rather than limit its analysis to a predefined range of load and price levels, the [Market Monitor] has analyzed every relevant market defined by a constraint and the system software. The relevant energy markets in this analysis are those local energy markets created by transmission constraints within the broader PJM market that occurred for one hundred or more hours in the January 1, 2013 through June 30, 2014 period where the Applicants provided relief MW in seventy five or more hours. The relevant ancillary services markets are those defined by the actual operation of PJM markets in the January 1, 2013 through June 30, 2014, period. The relevant capacity markets are those that resulted from the actual operation of the markets for the 2016/2017 and 2017/2018 delivery years.

Id. at 5.

market structure relative to the pre-transaction scenario. The Market Monitor cautions, however, that in other markets that the Market Monitor identifies as relevant markets, the Option 1 and Option 2 mitigation proposals, regardless of assumed purchasing agent, have little or no impact on alleviating the anticompetitive effect of the Proposed Transaction.

69. The Market Monitor elaborates that, even with Applicants' proposed mitigation, the Proposed Transaction would have an anticompetitive impact on several local energy markets.[59] Accordingly, the Market Monitor recommends that the Commission require three types of behavioral mitigation measures to address competitive concerns. First, the Market Monitor recommends that the Commission require Talen Energy to make cost-based offers in the energy and regulation markets. Second, the Market Monitor also recommends requiring Talen Energy to continue to offer the same units and quantities historically offered into the regulation market because participation is voluntary and one way to exercise market power is simply not to offer resources into the market. Third, the Market Monitor also recommends precluding any Option 1 or Option 2 asset divested by Applicants (and kept separate from Talen Energy post-transaction) from being sold to any PJM market participant with more than three percent of the installed capacity in the overall PJM market, in the PJM MAAC submarket, or in the PJM 5004/5005 submarket. The Market Monitor explains that this would preclude selling Option 1 and Option 2 assets to the following entities: American Electric Power Company; Dominion Resources, Inc.; Duke Energy Corp.; Exelon Corp.; First Energy Corp.; NRG Energy Inc.; Public Service Enterprise Group Incorporated; and Calpine Corp., or to any of their directly or indirectly held subsidiaries.[60]

c. Applicants' Answer

70. Applicants contend that the Market Monitor's Report does not meet the Commission's evidentiary standards for proper consideration in a section 203 proceeding. Applicants point out that the Market Monitor does not provide any supporting workpapers accompanying its Report and, thus, its results cannot be duplicated using data available to Applicants or anyone other than the Market Monitor, which they contend is inconsistent with the Commission's merger review policy. They argue that, because the Market Monitor's analysis is presented without corroborating and verifiable supporting data, it is insufficient to demonstrate that the Proposed Transaction poses any potential

[59] *See* Appendix A, listing the Market Monitor's local energy markets where the Market Monitor claims the Proposed Transaction has an effect on horizontal competition.

[60] Market Monitor's September 19, 2014 Corrected Comments at 1.

competitive harm. Thus, Applicants contend that the Commission should not consider the Market Monitor's Report as credible evidence of competitive harm.

71. Applicants further assert that, in addition to not meeting the Commission's standards of evidentiary support for market analyses, the conclusions in the Market Monitor's Report are unfounded and meritless. They state that, as demonstrated in the Second Supplemental Affidavit of Julie R. Solomon (Supplemental Solomon Affidavit) and discussed below, the conclusions in the Market Monitor's Report are premised on flawed analysis. They add that, in any event, the Market Monitor's analysis does not even support its own conclusions. Applicants highlight the fact that the Market Monitor's Report does not dispute Applicants' assertion, utilizing the Commission's delivered price test, that the Proposed Transaction does not have a competitive effect in energy markets. They point out that the Market Monitor instead focuses on very narrowly-defined product and geographic markets, using an approach for defining alternative markets that the Commission recently rejected.[61] Applicants add that the Market Monitor's Report does not identify any historical price effects that would support the Market Monitor's ad hoc definition of "market," which they assert is inconsistent with the Commission's policy for identifying geographic markets. Applicants contend that the Market Monitor's proposed remedy – "requiring Talen [Energy] to make cost-based offers in the energy and regulation markets" – is counter to the Market Monitor's own conclusions because the Market Monitor lacks credible evidence of competition issues in those markets. Thus, Applicants assert that the Commission should reject the remedies the Market Monitor proposes, in particular, the Market Monitor's proposal that the Commission should exclude any PJM market participant with more than three percent of installed capacity in PJM, MAAC or the 5004/5005 submarket from eligibility to purchase any of the divested generation. Applicants assert that the Market Monitor's recommendations with respect to buyer restrictions are not supported by any quantitative analysis and there is a lack of nexus between its analysis and recommendations. They assert that, in lieu of the Market Monitor's recommendation, the Commission should accept Applicants' commitment not to sell the divested generation units to market participants owning more than 10 percent of the total installed capacity in the 5004/5005 submarket. They assert that this commitment is consistent with the conclusion that the delivered price test screens were failed only in the 5004/5005 submarket and not in the PJM market overall.

[61] Applicants' Answer at 4, 8-9 (citing *NRG Energy Holdings, Inc.*, 146 FERC ¶ 61,196, at P 80 (2014)).

d. Market Monitor's Response

72. In its response, the Market Monitor disputes Applicants' claim that "by focusing on very narrowly defined product and geographic markets …the [Market Monitor's] Report alleges market power concerns where there are none."[62] The Market Monitor claims that defining markets properly requires identification of actual product substitutability by using operational data related to the participants that reflect the market as it exists.[63] The Market Monitor goes on to state that, unlike structural tests that define markets by geographic proximity, the relevant markets in the Market Monitor's analysis are defined based on the incremental, effective MW of "raise relief supply"[64] available to relieve each market-defining constraint based on the actual operation of PJM's system. The Market Monitor asserts that this definition of "the market" allows the identification of resource owners who are in a position to exercise market power by directly affecting locational prices when a transmission constraint binds.[65]

73. The Market Monitor also disputes Applicants' claim that 100 constraint hours is not of sufficient duration for defining significant markets that warrant closer (e.g., Appendix A) analysis. The Market Monitor explains that the PJM wholesale electricity market is cleared, priced, and settled on an hourly basis. The Market Monitor claims that this means that each hour in the PJM wholesale electricity market represents a complete market period for the wholesale sale of electricity and is therefore of significance. The Market Monitor asserts that the use of constraint hours may under-represent their significance because certain physical unit limitations may cause units to be dispatched for multiple hours after a constraint event, or a constraint may be relieved prior to the constraint actually binding.[66]

74. The Market Monitor further disagrees with Applicants' contention that the Market Monitor does not identify any price effects that may have occurred during hours where the Market Monitor's market definition is applied. The Market Monitor states that, while it did not provide price information initially, all binding constraints have an effect on

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[62] Market Monitor's Response at 2.

[63] *Id.*

[64] As used by the Market Monitor, the term "raise relief supply" refers to the amount of MW available to relieve the constraint. *See* Market Monitor's Report at 5.

[65] *Id.* at 3.

[66] *Id.* at 4.

system prices, causing price separation.[67] The Market Monitor provides shadow prices to demonstrate the magnitude of the price effect.[68]

75. The Market Monitor disagrees with Applicants' assertion that historical results are not predictive of future results. The Market Monitor states that the list of constraints that have significant effects on price and congestion in PJM remains largely unchanged year after year. Further, in the Market Monitor's view, conditions occur in repeated patterns that cause recognizable system conditions with recognizable results.[69]

76. The Market Monitor explains that a three pivotal supplier residual supply index (RSI) of less than 1.0 defines the existence of local market power. The Market Monitor elaborates that the lower the score falls below 1.0, the more market power the participant has in the market. Further, the lower a participant's RSI score, the more important, and the more pivotal, the participant is in meeting the expressed demand in the defined market.[70] The Market Monitor also explains that the reason there is no increase in the number of market hours during which the merging participant failed the three pivotal supplier test, is that the same hour is failed pre and post-merger. The Market Monitor contends that, for a merger to affect the number of hours for which participants fail the three pivotal supplier test, the merger would have to change the participant RSI score from a pass to a fail result for an hour.[71]

77. The Market Monitor summarizes its concerns stemming from the three pivotal supplier RSI as follows:

> The Talen combination increases the proportion of raise help assets[[72]] under the control of a single entity in several of the relevant peak markets (5004/5005, AP South, Central East,

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[67] *Id.* at 7.

[68] *Id.* The Market Monitor defines the shadow price of a constraint as the incremental cost of controlling the constraint using marginal resources.

[69] *Id.* at 8.

[70] *Id.* at 9.

[71] *Id.*

[72] As used by the Market Monitor, the term "raise help assets" refers to the assets that are available to provide electricity to relieve a constraint.

> Dickerson-Pleasant View, West) and off peak markets (5004/5005, Bridgewater-Middlesex, Central East, Dickerson-Pleasant View, West). In these markets the three pivotal supplier scores fell, showing an increase in the pivotal position of the now combined assets.[73]

The Market Monitor concludes that the Proposed Transaction would have a negative impact on the competitiveness of the markets.[74]

78. Regarding Applicants' mitigation proposal, the Market Monitor states that the analysis reflects the same unit bundle assumptions used by Applicants. The Market Monitor further states that Applicants provide no basis for the assumption that Option 1 or Option 2 units will be sold in disaggregated bundles, or that such disaggregated sales would make a material difference to the end-state market structure. The Market Monitor contends that, for example, Applicants provide no assurance, nor can they, that piecemeal sales of the affected assets would not result in a re-aggregation of the assets under a single owner.[75] The Market Monitor reiterates its requested relief that, to limit the effect of the proposed combination on market structure, the Commission require that no purchaser of Option 1 or Option 2 assets should have more than three percent of the installed capacity in the overall PJM market, in the PJM MAAC submarket, or in the PJM 5004/5005 sub-market.[76]

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[73] Market Monitor's Response at 10. The Market Monitor defines the supply in each market interval as the sum of incremental, effective MW of relief supply from all available online units compared to an unconstrained solution. Each unit's supply is calculated as the difference between its unconstrained dispatched MW and the constrained dispatch MW adjusted with its distribution factor for that particular constraint. The constrained dispatch MW of a unit consists of ramp limited MW that are available at a price less than or equal to the sum of the system marginal price and 1.5 times the congestion component attributed to that constraint (1.5 times constraint shadow price times unit distribution factor). The resulting measure of effective raise relief supply is the relevant effective supply in the market for the relief of the defined constraint.

[74] *Id.* at 11.

[75] *Id.* at 13.

[76] *Id.* at 12.

79. The Market Monitor states that, while it plays a significant role in implementing PJM's market power mitigation program, it does not have the ability to prevent an offer from being offered into the energy market and setting the market clearing price simply because the Market Monitor finds that it is excessive and involves a potential exercise of market power. The Market Monitor explains that mitigation rules for PJM markets apply only to local constraints and local market power. The mitigation rules do not address aggregate market power that affects the whole PJM market.[77]

80. Additionally, with respect to the regulation market, the Market Monitor states that, although the Proposed Transaction has a minimal effect on the market structure of the regulation market, it is an anticompetitive effect because the regulation market is concentrated.[78] Consequently, the Market Monitor reiterates its request that, if the Proposed Transaction is approved, the Commission require Talen Energy to make cost-based offers in the regulation market as well as the energy market. The Market Monitor also recommends requiring Talen Energy to continue to offer the same units and quantities historically offered into the regulation market because, unlike the energy market, participation in the regulation market is voluntary and one way to exercise market power is simply not to offer resources into the market.[79] The Market Monitor concludes by stating that the conditions it requests for the Proposed Transaction do not undermine the market's ability to create and respond to economic price signals.[80]

e. Commission Determination

81. As explained below, we find that Applicants have not demonstrated that the Proposed Transaction, with the mitigation as proposed by Applicants, will not have an adverse effect on horizontal competition. Applicants have not demonstrated that their proposed mitigation would adequately mitigate the market power screen failures in the 5004/5005 submarket. We therefore condition approval of the Proposed Transaction on additional mitigation measures in the 5004/5005 submarket, as discussed below, and a requirement that Applicants file in this docket, prior to closing of the Proposed Transaction, a statement in which Talen Energy acknowledges and agrees to be bound by the terms of the mitigation accepted in this order, including the additional mitigation measures required to address market power concerns in the 5004/5005 submarket.

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[77] *Id.* at 13.

[78] *Id.* at 14.

[79] *Id.* at 15.

[80] *Id.*

82. Applicants analyzed the effect of the Proposed Transaction on PJM, where PPL Energy Supply and RJS Power Holdings have overlapping generation,[81] and the PJM submarkets previously deemed relevant by the Commission: 5004/5005; AP South; and PJM East.[82] Applicants point out that all of the generation owned by RJS Power Holdings and the vast majority of the generation owned or controlled by PPL Energy Supply is located in the PJM East or 5004/5005 submarkets.

83. Applicants evaluated the Proposed Transaction under both Economic Capacity and Available Economic Capacity measures and we will do the same. In markets with widespread retail competition (such as Pennsylvania), the Commission has tended to consider Economic Capacity analysis to be more appropriate.[83] Nevertheless, the Commission has stated that "both the economic capacity and available economic capacity measures remain useful" and the inclusion of both "will ensure that the Commission has a more complete record on which to make its determination of whether the proposed transaction will have an adverse effect on competition."[84] Indeed, in states with retail competition where utilities retain provider of last resort obligations, the Commission has determined that both Available Economic Capacity and Economic Capacity can provide

[81] Since post-transaction Applicants' combined market share will be less than 1 percent in ISO-NE, we agree with Applicants that the extent of Applicants' business transactions involving ISO-NE is *de minimis* and no competitive analysis is required for that market.

[82] For definition of submarkets in PJM, *see Exelon Corp*., 138 FERC ¶ 61,167, at P 26 & nn.19-20 (2012) (explaining that the AP South submarket, as defined by the constrained AP South interface, consists of the following 500 kilovolt (kV) lines: Mt. Storm-Doubs, Greenland Gap-Meadowbrook, Mt. Storm-Valley, and Mt. Storm-Meadowbrook. The AP South submarket consists of the following transmission zones: Atlantic City Electric Company, BGE, Dominion Resources, Delmarva Power & Light, Jersey Central Power & Light, Metropolitan Edison, PECO, Potomac Electric Company, PPL Electric, Public Service Electric & Gas, and Rockland Electric Company. The 5004/5005 constraint is defined by the Keystone-Juniata 5004 line and the Conemaugh-Juniata 5005 line. The 5004/5005 submarket largely overlaps the AP South submarket but does not include the Dominion Transmission Zone.).

[83] *Cf. Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261, at 32 & n.53 (2013) (citing cases explaining that Available Economic Capacity is more relevant where there is no retail competition); *see also* Market Monitor's Report at 6.

[84] *Order reaffirming commission policy*, 138 FERC ¶ 61,109 at P 46.

useful information for analyzing the effect of the proposed transaction on competition.[85] Thus, given PPL Electric's provider of last resort obligation, we will consider both the results of the Economic Capacity and Available Economic Capacity analysis as relevant to the Proposed Transaction.[86]

84. Before addressing the conclusions that can be drawn from the results of the delivered price test, we first note certain flaws in Applicants' delivered price test. For example, Applicants only considered one constraint, the aggregate simultaneous transmission import limitation (SIL) values into the PJM market and the PJM submarkets, and failed to consider physical constraints from individual first-tier areas into those markets. The Merger Policy Statement requires applicants to select potential suppliers based on their ability "to reach the market both economically and physically."[87] Further, as the Commission explained:

> The key to incorporating transmission limitations into the merger analysis is to include each supplier in the relevant market only to the extent of the transmission capability available to them. This would be calculated as the combination of the available transmission capability and any firm transmission rights held by the supplier that are not committed to long-term transactions.[88]

Because Applicants' analysis simply assigns shares of SIL capability to uncommitted generation capacity in aggregated first-tier balancing authority areas to determine how much uncommitted generation capacity can enter the relevant geographic markets, Applicants' study does not satisfy the requirements of the Merger Policy Statement.[89] In

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[85] *National Grid, plc and KeySpan Corp.*, 117 FERC ¶ 61,080, at P 26 (2006) (finding that because New York State has retail competition but utilities retain significant provider of last resort obligations, both Available Economic Capacity and Economic Capacity can provide useful information in analyzing the effect of the merger on competition).

[86] *Order reaffirming commission policy*, 138 FERC ¶ 61,109 at P 46.

[87] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,130.

[88] *Id.* at 30,132-33.

[89] Applicants cite *NRG Energy, Inc.*, 141 FERC ¶ 61,207 (2012) (*NRG Energy*). Joint Application, Solomon Aff. at 24. We emphasize that the Commission accepted applicants' study in *NRG Energy* based on the particular circumstances of that case, where "a large amount of uncommitted generation in the particular study areas negate[d]

(continued...)

addition, in their "wkp - generation dataset," Applicants listed some assets in the delivered price test as "proposed[,]" "permitted[,]" or "under construction[,]" although these assets had actually been canceled and would not be competing to serve the relevant geographic markets.[90] Applicants mistakenly include these assets as competing supplies in their delivered price test model. Nevertheless, we were able to correct these errors in the delivered price test model and obtain results that are not materially different from the results Applicants reached.

85. Applicants' delivered price test analysis shows that the Proposed Transaction passes the delivered price test in PJM in all time periods under Economic Capacity and Available Economic Capacity measures, with a change in HHI below 20 points under Economic Capacity measures.

86. Applicants' delivered price test analysis also reveals that the PJM East and AP South submarkets do not raise competitiveness concerns. According to Applicants' analysis, the PJM East submarket is at most moderately concentrated, and the HHI changes are less than 50 points, relative to a 100-point threshold under the Economic Capacity measure. Similarly, the AP South submarket is also moderately concentrated, and the HHI changes are less than the 100-point threshold for Economic Capacity. Applicant's analysis shows that Talen Energy's post-transactional market share in PJM East will be less than 10 percent and its market share in AP South will be equal to or less than 15 percent. The delivered price tests for the price sensitivity cases yield similar results, and Applicants pass the delivered price tests for Economic Capacity in PJM East and AP South under these different price assumptions.

87. However, Applicants' delivered price test analysis in the 5004/5005 submarket shows post-transactional HHI changes that exceed the 100-point threshold in a moderately concentrated market for Economic Capacity, ranging from 129-150 points.[91] To address the competitiveness concerns in the 5004/5005 submarket, Applicants

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the [oversimplified *pro rata* allocation methodology] flaw in [a]pplicants' model." *NRG Energy*, 141 FERC ¶ 61,207 at P 64. The Commission did not implement a new policy in *NRG Energy* on the calculation or allocation of SILs that disregards the physical transfer limitations of the grid.

[90] *See, e.g.*, L. Vasquez & D. Stetzel**,** *Gas, Wind, Set to Dethrone King Coal in Midwest*, Platts.com (July 16, 2013) (noting that Dominion, for one, has canceled its plans to build the 300-MW Prairie Fork wind farm).

[91] We note that the Market Monitor's analysis also reveals concerns with the 5004/5005 submarket, as discussed *infra*.

propose mitigation measures and post-closing interim mitigation measures to support their mitigation plan.

88. Specifically, to ameliorate market power concerns, Applicants propose that within one year of the closing of the Proposed Transaction, Talen Energy will enter into a contract or contracts for the divestiture of approximately 1,300 MW of generation under either of two alternative divestiture options. Option 1 Mitigated Assets involve six Riverstone plants and one PPL plant in New Jersey and Pennsylvania. Option 2 Mitigated Assets involve the same six Riverstone plants, plus a 399 MW coal-fired plant in Maryland and two PPL hydroelectric plants in Pennsylvania. Applicants propose that no company with more than 10 percent of PJM's summer installed capacity would be permitted to bid for the plants. This would exclude PSEG, Exelon and NRG Energy from purchasing any of the Mitigated Assets. Applicants explain that the divestiture of these Mitigated Assets will require subsequent proceedings under section 203 of the FPA, in which the market power of purchasers of these Mitigated Assets from Talen Energy will be evaluated. In addition, Applicants propose interim mitigation measures to be effective post-closing, during the year in which the divestitures are being completed. Under these interim mitigation measures, an Independent Energy Manager will bid and dispatch both Option 1 Mitigated Assets and Option 2 Mitigated Assets.

89. We find Applicants' proposed mitigation is insufficient to address the competitiveness concerns identified in the 5004/5005 submarket, one of the submarkets with the greatest overlap of Applicants' generation resources, as explained below.[92] Accordingly, we condition our authorization of the Proposed Transaction on additional mitigation measures to address the competitiveness concerns in the 5004/5005 submarket, as explained below.

90. Specifically, we find that Applicants have not demonstrated that the Proposed Transaction, with Applicants' proposed mitigation, will not have an adverse effect on competition because Applicants have not demonstrated that their proposed mitigation would adequately mitigate the market power screen failures in the 5004/5005 submarket. Specifically, we are concerned about the residual screen failures in the 5004/5005 submarket under super peak 1 conditions when the 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. Under the Available Economic Capacity analysis, neither the Option 1 nor Option 2 divestiture proposals fully mitigates the indicative screen failures in the summer

[92] Despite Applicants' assertions that congestion and binding constraint hours in the 5004/5005 submarket have decreased in recent years due to transmission upgrades, diminishing the significance of this submarket, we continue to consider the 5004/5005 submarket relevant, in the absence of more conclusive evidence to the contrary.

super peak 1 period in the 5004/5005 submarket under the super peak 1 base case scenario or in the sensitivity analysis scenario, which increases prices by 10 percent.[93] While the Commission has looked beyond screen failures in transactions where those screen failures are non-systemic and occur in off-peak hours,[94] here the screen failures in this peak period are of particular concern because of the limited alternative supply (due to binding transmission constraints) that may be available to prevent an attempt to withhold production or to place uncompetitive bids in the market to drive up prices. The Commission has previously found that transactions subject to section 203 may have an adverse effect on competition, absent mitigation, where screen failures occur only in peak periods.[95] Accordingly, we find that the Proposed Transaction, including the proposed mitigation – divestiture of either Option 1 or Option 2 Mitigated Assets – is not sufficient to ensure that the Proposed Transaction will not adversely affect competition in the 5004/5005 submarket. Thus, we condition our authorization of the Proposed Transaction on additional mitigation measures, as described below.

91. Under the additional mitigation measures we require, Applicants may choose to either: (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

[93] *See* Joint Application at 43; Joint Application – *Wkp HHI High Prices Divestiture Option 1*; and Joint Application – *Wkp HHI High Prices Divestiture Option 2.*

[94] *See FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 49 (2010) (finding no adverse effect on competition in PJM where screen failures occur in three off-peak periods); *Exelon Corp.*, 138 FERC ¶ 61,167 at P 98 (finding no adverse effect on competition in PJM East where screen failures occur in three off-peak periods).

[95] *See Oklahoma Gas and Electric Co.*, 124 FERC ¶ 61,239, at PP 43-47 (2008) (finding mitigation required for transaction resulting in two horizontal market power screen failures during summer peak in the Oklahoma Gas and Electric balancing authority area market).

the two additional mitigation measures is selected.[96] 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.

92. We also accept Applicants' commitment to exclude, as eligible buyers, entities that own more than 10 percent of the total installed capacity (based on summer ratings) in the 5004/5005 submarket. As previously noted, under this limitation, the only "excluded" buyers are PSEG, Exelon, and NRG Energy, and their respective affiliates. We share the Market Monitor's concern that mitigation (divestiture of all of the Option 1 and Option 2 Mitigated Assets) may not be adequate if the Mitigated Assets are acquired in a single bundle by another PJM market participant. However, because the sale of the Mitigated Assets will require separate approval under section 203 of the FPA, we do not find it necessary to preclude the purchase of the Mitigated Assets by any PJM market participant with more than three percent of the installed capacity in the overall PJM market, in the PJM MAAC submarket, or in the PJM 5004/5005 submarket, as the Market Monitor suggests. In this regard, we note that, in any subsequent section 203 applications involving sale(s) of the Mitigated Assets, we would have to address the effect of the proposed transaction on competition. If required under our regulations, the applicants in those subsequent proceedings would have to submit a competitive screen analysis that takes into account the identity of the purchaser(s) of the Mitigated Assets. Therefore, given this additional scrutiny in the subsequent 203 proceedings, and because the Mitigated Assets may be sold individually to several buyers (including entities that may have no, or a very small, market presence in the PJM 5004/5005 submarket) rather than as a single bundle to a single purchaser, we will not, in this order, preclude sales of any of the Mitigated Assets to market participants with more than three percent of the installed capacity in the broader PJM market, or in the PJM MAAC submarket, or 5004/5005 submarket.

93. In addition, we find Applicants' proposed interim mitigation measures will ensure that Talen Energy will not be able to exercise market power prior to completion of the required divestitures. Specifically, prior to completing the required divestitures, Talen Energy will effectively relinquish day-to-day control over the dispatch of *all* of the Mitigated Assets, totaling approximately 2,000 MW of generation, including decisions relating to dispatch of the Mitigated Assets, to an Independent Energy Manager. We emphasize that the interim mitigation is intended to be temporary. Thus, we will require that Talen Energy enter into a binding agreement or agreements to divest either all of the

[96] Upon receipt, the Commission will not act on or notice the informational filing.

Mitigated Assets or the Option 1 or Option 2 assets, depending on Applicants' selection, within one year after the closing of the Proposed Transaction. With this time limit, we accept Applicants' proposed interim mitigation measures, including their proposal to appoint an independent monitor, to certify that Talen Energy has complied with the interim mitigation requirements.

94. Under Applicants' interim mitigation proposal, no entity may serve as the Independent Energy Manager if it owns, controls, or manages more than 5,000 MW of generation in the 5004/5005 submarket.[97] Under the terms of the agreement between Talen Energy and the Independent Energy Manager, the Independent Energy Manager will have a performance-based incentive to maximize revenue in excess of what the units would receive if bid at cost.[98] Moreover, Talen Energy will not retain the right to market any of the output of any of the Mitigated Assets during the interim mitigation period. Talen Energy and the Independent Energy Manager will enter into a binding and comprehensive agreement, setting forth their respective obligations concerning interim mitigation, which will be filed with the Commission.[99] Finally, the facilities subject to the interim mitigation are in an organized market and Applicants have committed to independent monitoring to ensure that they comply with the terms of the interim mitigation.[100]

95. We accept Applicants' offer to engage an independent monitor to review all information exchanged between Talen Energy and the Independent Energy Manager. Applicants should inform the Commission within 10 days of the appointment of the independent monitor.[101] The independent monitor shall inform the Commission of

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[97] Joint Application at 48 & n.151.

[98] *Id*. at 46 and Attachment 3 at 4 (providing the term sheet for the contract with the Independent Energy Manager, which states that the management fee will be competitively bid and includes a formula for the performance-based incentive adder).

[99] *Id*. at 47 (proposing to file the executed agreement with the Commission for approval within 30 days of issuance of this order). *See also infra* Ordering Paragraph (H) (requiring Applicants to file the executed agreement with the Independent Energy Manager within 10 days of its execution).

[100] *See generally MACH Gen, LLC*, 142 FERC ¶ 61,178 at PP 28-33 (rejecting proposed mitigation, where there are "dramatic screen failures" and the purchaser does not relinquish control of mitigated assets).

[101] Joint Application at 49. *See also infra* Ordering Paragraph (H) (requiring Applicants to inform the Commission of the identity of the independent monitor

(continued...)

any violations of the terms of the interim mitigation. This requirement shall remain in effect while the interim mitigation is in place.

96. We note that the entity responsible for complying with the proposed mitigation, that is, both the sale of the generating assets and the interim mitigation, will be Talen Energy. However, Talen Energy is not an Applicant in this proceeding. Therefore, to ensure that these mitigation measures are properly implemented, we will condition our authorization of the Proposed Transaction upon Applicants' filing in this docket, prior to closing of the Proposed Transaction, a statement in which Talen Energy acknowledges and agrees to be bound by the terms of the mitigation measures accepted in this order, including the additional mitigation measures required to address market power concerns in the 5004/5005 submarket.

97. Next, we turn to the Market Monitor's analysis, in which the Market Monitor analyzes the effects of the Proposed Transaction on certain local geographic markets in addition to the submarkets Applicants considered in their competitive screen analysis.[102] The Commission has previously recognized the following submarkets in PJM: PJM East,[103] 5004/5005, and AP South.[104] In recognizing these submarkets, the Commission

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appointed to oversee the terms of the interim mitigation within 10 days of its appointment).

[102] The Commission allows intervenors to file alternative competitive analyses, accompanied by appropriate data, to support their arguments. Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119.

[103] *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Servs. by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 91 (citing *El Paso Energy Corp*., 92 FERC ¶ 61,076 (2000), *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305, *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012); *Energy East Corp*., 96 FERC ¶ 61,322 (2001); *Potomac Electric Power Co*., 96 FERC ¶ 61,323 (2001)).

[104] *See Exelon Corp*., 138 FERC ¶ 61,167 at P 26 (noting that during the year prior to recognition of the new submarkets, the AP South transmission interface was constrained for day-ahead transactions in 53 percent of the hours and for real-time transactions in 17 percent of the hours and the 5004/5005 interface transmission

(continued...)

required a "demonstration regarding whether there are *frequently* binding transmission constraint[s] during historical seasonal peaks and other competitively significant times that prevent competing supply from reaching [customers] within the proposed alternative geographic market.[105] We disagree with the Market Monitor's assertion that 100 hours, which represents less than 0.8 percent of the total hours over an 18 month period, is frequent. Notwithstanding the Market Monitor's suggestion that other local geographic markets should be considered, we conclude that currently PJM East, 5004/5005, and AP South are the only relevant geographic submarkets for purposes of evaluating the effect of the Proposed Transaction on horizontal market power, as explained below.

98. Using a different approach for evaluating market power than the delivered price test required by the Commission, the Market Monitor identifies a number of local geographic markets, in addition to the ones Applicants considered in their competitive screen analysis. The Market Monitor analyzes the Proposed Transaction's effect on these additional proposed local geographic markets to assess horizontal competition by analyzing changes in HHI and changes in the three pivotal supplier RSI. However, our evaluation of the Market Monitor's analysis leads us to conclude that these local geographic markets are already subsumed in the submarkets that Applicants analyzed, or do not have frequently binding transmission constraints. Therefore, we do not find it necessary to require Applicants to perform additional delivered price tests in these local geographic markets to demonstrate that the Proposed Transaction does not have an adverse effect on competition in addition to the concerns identified in the 5004/5005 submarket.

99. The Market Monitor provides a summarized analysis and contends that binding constraints limit available transmission capability at certain times on a number of transmission paths/facilities. The Market Monitor asserts that during these constrained time periods, the Proposed Transaction will lead to an increase in market concentration for certain local geographic markets, including the PJM submarkets previously recognized by the Commission, as well as additional regions. Specifically, the Market Monitor has expressed concerns regarding the following peak markets: 5004/5005; AP

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constraint was binding for day-ahead transactions in 19 percent of the hours and for real-time transactions in six percent of the hours).

[105] *Id.* P 32 & n.29. *See also Dominion Energy Brayton Point, LLC*, 144 FERC ¶ 61,139, at P 37 (2013); *Central Vermont Pub. Serv. Corp.*, 138 FERC ¶ 61,161, at P 29 (2012); *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 52 (2010); *AEP Power Marketing, Inc.*, 124 FERC ¶ 61,274, at PP 24-25 (2008) (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268 (2007)); *Boralex Livermore Falls LP*, 122 FERC ¶ 61,033, *order on reh'g*, 123 FERC ¶ 61,279, at P 25 (2008).

South; Central East; Dickerson-Pleasant View; and West Interface. The Market Monitor has also expressed concern for the following off-peak markets: 5004/5005; Bridgewater-Middlesex; Central East; Dickerson-Pleasant View; and West Interface. The Market Monitor's analysis indicates that Applicants' proposed mitigation, divestiture of either the Option 1 Mitigated Assets or the Option 2 Mitigated Assets, does not address the Proposed Transaction's adverse effects on competition in these specific markets.

100. The Market Monitor's analysis presents the effect of the Proposed Transaction, as mitigated, on a number of proposed local geographic markets and Commission-recognized submarkets that are relevant to the Proposed Transaction. Based on the Market Monitor's Report, four of these proposed markets, 5004/5005, Central East, Dickerson-Pleasant View, and West, warrant additional attention because the analysis indicates an average change in mean HHI under either Option 1 or Option 2 during peak hours that is persistently higher than the Commission's thresholds for transactions that do not require further inquiry.

101. First, in the 5004/5005 submarket, which has been previously recognized by the Commission,[106] we conclude that the Market Monitor's analysis confirms the conclusions that the Commission has drawn from the delivered price test. The Market Monitor's Report indicates that, in the 5004/5005 submarket, the Proposed Transaction, assuming completion of either the Option 1 or Option 2 asset divestiture, would result in an increase in HHI by more than 50 points on average in a concentrated market. Based on this analysis, the Market Monitor concludes that the Proposed Transaction would create a company (i.e., Talen Energy) with a "significant market position" that would exacerbate the market concentration in the 5004/5005 submarket.

102. Second, although the Dickerson-Pleasant View constraint, according to the Market Monitor's analysis, showed average increases of more than 250 HHI points under either mitigation option, the Market Monitor's analysis provides evidence of only a limited number of binding constraint hours at Dickerson-Pleasant View. Specifically, the evidence in the record indicates only 100 hours, during the 18-month period from January 1, 2013 to July 30, 2014, when the Dickerson-Pleasant View transmission line was constrained. As a result, we find that the Market Monitor's analysis does not persuade us that the constraint is "a frequently binding transmission constraint" that creates price divergence between the rest of PJM and Dickerson-Pleasant View and, therefore, should be considered a separate PJM submarket. There is also no evidence that the binding constraint occurred during historical peaks or at other competitively significant times, preventing competing supply from reaching within the Dickerson-Pleasant View constraint. Thus, we conclude that the Market Monitor has not provided

[106] *See Exelon Corp.*, 138 FERC ¶ 61,167 at P 31.

sufficient evidence to support a finding that Dickerson-Pleasant View should be considered a submarket in PJM.

103. Third, the Central East region was constrained in only 288 total hours or 2.2 percent of all hours and 3 percent of peak hours during this same 18-month period.[107] There is also no evidence that the binding constraints occurred during historical peaks or at other competitively significant times, preventing competing supply from reaching within the Central East constraint. Therefore, we conclude that there is not sufficient evidence in the record to support a finding that Central East should be considered a submarket in PJM.

104. Fourth, regarding the West Interface, the Market Monitor's analysis indicates that there were 440 hours when it was constrained during the relevant 18-month time period. The Market Monitor notes that the Proposed Transaction "create[s] a company with a significant market position that would, relative to the current disposition of raise help assets, exacerbate the market concentration in this market."[108] The Market Monitor's analysis indicates that in the West Interface, the Proposed Transaction would not pass the Commission's competitiveness screens on average under Option 1 and it would not pass the Commission's screens under Option 2 if the purchaser had any existing market presence.[109] Applicants' Answer notes the frequency of the constraints on the West Interface in both peak hours (4.3 percent) and total hours (3.4 percent).[110] The evidence indicates that constraints along the West Interface region may be increasing. Nevertheless, we are not persuaded to find that the West Interface rises to the level of a separate submarket at this time, since the frequency of constraints is still relatively low and the West Interface shares overlapping interfaces with the 5004/5005 submarket, which Applicants have considered in their delivered price test analysis and which we have determined is the locus of competitive concerns associated with the Proposed Transaction. Nevertheless, because the area east of the 5004/5005 submarket and east of the West Interface largely overlap,[111] the Market Monitor's separate analysis of the West

[107] *See* Supplemental Solomon Aff. at 6.

[108] Market Monitor's September 19, 2014 Corrected Comments at 50.

[109] *Id.* at 25.

[110] Applicants' Answer, Supplemental Aff. at 6.

[111] The Western Interface includes the following lines: The Keystone-Juniata 5004 line, the Conemaugh-Juniata 5005 line, the Conemaugh-Hunterstown 5006 line, and the Doubs-Brighton 5055 line. The 5004/5005 interface only includes the Keystone-Juniata 5004 line and the Conemaugh-Juniata 5005 line.

Interface constraint serves to corroborate conclusions regarding the adverse effect of the Proposed Transaction on horizontal competition in the energy market for the 5004/5005 submarket within PJM.[112]

105. Regarding the other local geographic markets proposed by the Market Monitor, the Market Monitor's analysis indicates that some of these other proposed local geographic markets have more frequently binding constraints than the proposed Dickerson-Pleasant View or Central East geographic markets. However, the Market Monitor's analysis shows concentration changes in these other regions are markedly lower, with mean HHI changes ranging from 0-48 in all hours.[113] Thus, even if we were to take the analysis in the Market Monitor's Report at face value, there is no evidence in the record that the Proposed Transaction, including the proposed mitigation options, would continue to fail the Commission's market power screens in a delivered price test in any of these local geographic markets.

106. Additionally, if we were to consider the local geographic regions of concern to the Market Monitor, alternative analysis using the three pivotal supplier RSI test does not demonstrate that the Proposed Transaction would have an adverse effect on competition.[114] The Market Monitor states that post-transaction, Talen Energy "increases the proportion of raise help assets under the control of a single entity in several of the relevant peak markets (5004/5005, AP South, Central East, Dickerson- Pleasant View, West) and off peak markets (5004/5005, Bridgewater- Middlesex, Central East, Dickerson-Pleasant View, West)."[115] However, the three pivotal supplier RSI test does not provide clear evidence that the Proposed Transaction would have an adverse effect on market concentration, given that these markets already fail the three pivotal supplier RSI test prior to the Proposed Transaction in the Market Monitor's analysis and no markets were identified by the Market Monitor that went from passing the three pivotal supplier RSI test to failing it following the Proposed Transaction, as mitigated.

107. We also find that the Proposed Transaction will not adversely affect competition in the PJM capacity markets. Applicants appropriately considered data from

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[112] Applicants' Answer at 8.

[113] *See* Market Monitor's September 19, 2014 Corrected Comments at Table 7, Table 8, and Table 9.

[114] *See id*.; *see also supra* PP 76-77, discussing the Market Monitor's evaluation of the three pivotal supplier RSI analysis for the Proposed Transaction.

[115] Market Monitor's Response at 10.

the 2016/2017 and 2018/2019 PJM base residual auctions. No party has presented an alternative analysis that demonstrates competitive harm in the capacity market. The Proposed Transaction, even with the more limited mitigation as proposed by Applicants, does not cause screen failures in either the PJM-wide market or the narrower MAAC local deliverability area.

108. In addition, there is no indication that there will be any adverse impact on competition in the markets for ancillary services, including regulation, synchronized reserve, and non-synchronized reserves. PPL Energy Supply and Riverstone affiliates are minor participants in these markets, as evidenced by the HHI change of only one point. Therefore, we decline to condition our authorization of the Proposed Transaction upon the additional mitigation that the Market Monitor proposes for the regulation market.

2. Effect on Vertical Competition

a. Applicants' Analysis

109. Applicants state that the Proposed Transaction does not raise any vertical market power concerns. They explain that Talen Energy will not own or control any electric transmission facilities, and none are being transferred as part of the Proposed Transaction, except for facilities used to interconnect the relevant generating facilities to the transmission grid.[116] Applicants state that service over transmission owned by PPL Corp.'s affiliates is currently provided under Commission-approved OATTs, and this will continue to be the case after the Proposed Transaction.

110. Additionally, Applicants assert that neither the PPL Energy Supply Companies nor any Riverstone affiliate controls any upstream generation inputs that could impact the costs of other electricity generators.[117] Applicants state that PPL Energy Supply is the indirect owner of PPL Interstate Energy Company (PPL Interstate), which owns and operates an interstate natural gas and oil distribution system that serves exclusively the Martins Creek Steam Electric and Lower Mount Bethel generating stations.[118] Applicants explain that PPL Interstate transports natural gas as well as oil on the northernmost segment of its pipeline, which was converted in 1995 to dual natural gas/oil

[116] Joint Application at 52.

[117] *Id.*

[118] Applicants note that the Commission has declared that Interstate Energy Company is not subject to its jurisdiction under the Interstate Commerce Act. *Id.* at 52 & n.159 (citing *Interstate Energy Co.*, 32 FERC ¶ 61,294 (1985)).

usage, to Martins Creek Steam Electric Station.[119] Applicants state that the dual use pipeline presently has connections with three interstate pipelines. Applicants state that PPL Interstate will become an indirect wholly-owned subsidiary of Talen Energy as part of the Proposed Transaction.[120] Applicants explain that this system is regulated by the Pennsylvania Commission as a common carrier pipeline.[121] They add that PPL Corp. and its affiliates own rail cars, which are used exclusively to ship coal to their own electric generating facilities. Noting that EEInc. indirectly owns a 3.9 mile rail line and associated railcars that transport coal shipments to EEInc.'s facilities in Joppa, Illinois, Applicants assert that the limited size and scope of these facilities do not allow them to be used to erect a barrier to entry.[122] They further state that EEInc. is not affected by the Proposed Transaction.

111. Applicants add that, pursuant to the Proposed Transaction, Talen Energy will become affiliated with certain Riverstone affiliates that own or control inputs to electric power production, which are identified in Exhibit B to the Joint Application. They state that none of the concerns that the Commission typically considers in evaluating vertical market power are present in the Proposed Transaction and, therefore, the Proposed Transaction does not create or enhance vertical market power.[123]

b. Commission Determination

112. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases a firm's ability or incentive to

[119] *Id.* at 52 & n.158.

[120] *Id.* at Attachment 1, Solomon Aff. at 5.

[121] *Id.* at 52 & n.159 (citing *Interstate Energy Co.*, 46 Pa. P.U.C. 524 (1979) (oil transportation); *Interstate Energy Co*., 53 Pa. P.U.C. 314 (1979) (same); *Interstate Energy Co*., Docket No. A-140200 (order adopted Apr. 13, 1995), *aff'd with modification, UGI Utils., Inc. v. Pa. Pub. Util. Comm'n*, 684 A.2d 225 (Pa. Commw. Ct. 1996) (natural gas transportation for the limited purpose of electric generation)). Applicants point out that the Commission has specifically ruled that Interstate Energy Company is not subject to its jurisdiction under the Interstate Commerce Act. *Id*. (citing *Interstate Energy Co*., 32 FERC ¶ 61,294 (1985)).

[122] *Id.* at 52 & n.160.

[123] *Id.* at 53; *id*., Solomon Aff. at 37.

exercise vertical market power in wholesale electricity markets. For example, by denying rival firms access to inputs or by raising their input costs, a firm created by the transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.[124]

113. We find that the Proposed Transaction does not raise any vertical market power concerns. As Applicants note, service over transmission owned by PPL Corp.'s affiliates will continue to be provided under Commission-approved OATTs after the Proposed Transaction closes. Further, the Proposed Transaction involves the separation of generation assets from affiliated transmission assets rather than a combination of generation with transmission. Likewise, Applicants have stated that, although PPL Interstate will become an indirect wholly-owned subsidiary of Talen Energy,[125] it will continue to be regulated by the Pennsylvania Commission as a common carrier pipeline. We agree with Applicants that EEInc.'s indirect ownership of a 3.9 mile rail line and associated railcars that transport coal shipments to EEInc.'s facilities is limited in size and scope and thus could not be used to impose barriers to entry of competing suppliers. Likewise, we find no evidence that PPL Corp. and its affiliates' railcars, which are exclusively used to ship coal to their own electric generating facilities, could be used to erect a barrier to entry of competitors.

114. Therefore, based on the facts presented in the Joint Application, we find that the Proposed Transaction does not raise any vertical market power concerns. We note that no party raised vertical market power issues in this proceeding.

3. Effect on Rates

a. Applicants' Analysis

115. Applicants assert that no adverse impact on rates will result from the Proposed Transaction. Applicants state that the Commission's main objective in examining a transaction's effect on rates is "to protect captive customers who are served under cost-based rates that could be adversely affected by a [s]ection 203 transaction."[126] They state that, aside from the incidental division of property at sites with co-located facilities (described in section 111.B of the Joint Application), the Proposed Transaction will not

[124] *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 160 (2011).

[125] Joint Application at Attachment 1, Solomon Aff. at 5.

[126] *Id.* at 53 (quoting Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 166).

involve the facilities of PPL Corp.'s traditional utilities that serve wholesale power and transmission customers through cost-based rates. Applicants add that, while they do not foresee that the Proposed Transaction will have any impact on transmission or wholesale power rates, nevertheless, PPL Corp., PPL Electric, LG&E, KU and EEInc. pledge to hold harmless all transmission and current wholesale customers from any costs associated with the Proposed Transaction, for a period of five years, to the extent that such costs exceed savings related to the Proposed Transaction. Noting that the Commission has found similar commitments by section 203 applicants sufficient to alleviate any concerns regarding a proposed transaction's impact on transmission rates, Applicants further clarify that this hold harmless commitment is not a rate freeze and would not preclude changes in transmission rates attributable to non-transaction-related costs or to the costs or value of the assets themselves.

116. Applicants state that neither the PPL Energy Supply Companies nor the RJS Power Holdings Companies have any captive wholesale or retail power customers. Applicants state that, except for their reactive power tariffs, all contracts under which the PPL Energy Supply Companies or the RJS Power Holdings Companies supply wholesale power service are entered into pursuant to their respective market-based rate tariffs. Applicants state that their reactive power tariffs do not contain any mechanism that would allow for the pass-through of transaction-related costs. Applicants state that the PPL Energy Supply Companies and the RJS Power Holdings Companies cannot impose any costs related to the Proposed Transaction on wholesale power customers and, therefore, all of these wholesale power customers are shielded from any adverse rate effects of the Proposed Transactions.

117. Applicants assert that the Proposed Transaction does not affect the jurisdictional facilities of PPL Electric, LG&E, KU, or EEInc., and, therefore, will have no effect on the rates charged by those entities to their wholesale power customers. Applicants state that PPL Electric does not have captive wholesale or retail customers and provides all wholesale power services pursuant to its market-based rate authority. Applicants state that LG&E also does not have any captive wholesale customers. Applicants add that, to the extent LG&E and KU make wholesale power sales at cost-based rates, all such sales are made pursuant to formula rates. EEInc. makes its wholesale sales pursuant to its market-based rate tariff and under a cost-based rate schedule with the U.S. Department of Energy on file with the Commission. EEInc.'s wholly-owned subsidiary, Midwest Electric Power Inc., sells its output to EEInc. under a cost-based contract on file with the Commission. Applicants state that, therefore, the Commission is able to monitor the rates to prevent the pass through of transaction-related costs to LG&E's, KU's, and EEInc.'s cost-based customers and enforce the hold harmless commitment. Applicants state that all other wholesale power sales by LG&E, KU, and EEInc. are made pursuant to their market-based rate authority, and therefore cannot impose any transaction-related costs on their customers.

118. Applicants state that the Proposed Transaction will not have any adverse effect on the transmission service rates of PPL Corp.'s transmission-owning utilities. Applicants state that, except as discussed above, PPL Electric, LG&E, KU, and EEInc. are not involved in the Proposed Transaction. Applicants add that PPL Electric, LG&E, KU, and EEInc. provide transmission service over their transmission facilities pursuant to OATTs and, with the exception of EEInc., serve transmission customers based on formula rates. Applicants state that the transparency of these formula rates, combined with Commission oversight, ensure that the hold harmless commitment will be honored and transaction-related costs will not be passed through into EEInc.'s transmission rates because EEInc. only provides firm and non-firm point-to-point transmission service at stated rates. Applicants state that, therefore, PPL Corp.'s transmission-owning utilities' transmission customers are shielded from any costs related to the Proposed Transaction.

b. Commission Determination

119. We emphasize at the outset that our analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable under section 205 of the FPA. Our focus here is on the effect that the Proposed Transaction will have on jurisdictional rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Proposed Transaction.[127]

120. Based on the record in this proceeding, we find that Applicants have shown that the Proposed Transaction will not have an adverse effect on rates, subject to certain clarifications discussed below. Applicants represent that they have no captive wholesale customers. Further, Applicants' reactive power tariffs contain no mechanism for the pass through of transaction-related costs. We note that none of PPL Corp.'s transmission-owning utilities are involved in the Proposed Transaction.

121. We accept Applicants' commitment to hold transmission and current wholesale customers harmless for five years from costs related to the Proposed Transaction. We interpret Applicants' commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction and transition costs (both capital and operating) incurred to achieve transaction synergies, incurred prior to the consummation

[127] *See, e.g.*, Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30, 123 (noting that an increase in rates "can be consistent with the public interest if there are countervailing benefits that derive from the transaction"); *see also ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 24 (2010); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at PP 25-28 (2008); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at PP 120-128 (2007).

of the Proposed Transaction or in the five years after the Proposed Transaction's consummation.[128]

122. The Commission has established that, where applicants make hold harmless commitments in the context of section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under FPA sections 203 and 205.[129] Consistent with those clarifications, and given the commitment by PPL Corp., PPL Electric, LG&E, KU and EEInc. to hold wholesale requirements and transmission customers harmless from transaction-related costs, if any of PPL Corp., PPL Electric, LG&E, KU or EEInc. seek to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then PPL Corp., PPL Electric, LG&E, KU or EEInc. must make that filing in a new FPA section 205 docket[130] and submit that same filing as a concurrent informational filing in this FPA section 203 docket.[131] The Commission will notice the new section 205 filing for public comment.

123. In the FPA section 205 proceeding, the Commission will determine first, whether PPL Corp.'s public utility subsidiaries have demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, PPL Corp.'s public utility subsidiaries must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. PPL Corp.'s public utility subsidiaries must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to,

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[128] *See, e.g.*, *Exelon*, 138 FERC ¶ 61,167 at P 118.

[129] *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-109 (2014).

[130] The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

[131] Upon receipt, the Commission will not act on or notice the concurrent informational filing.

or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.[132] The Commission will consider rates not to be "just and reasonable" if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.[133]

124. The Commission will be able to monitor Applicants' hold harmless commitment under its authority under FPA section 301(c)[134] and the books and records provision of the Public Utility Holding Company Act of 2005.[135] Moreover, the commitment is fully enforceable based on the Commission's authority under FPA section 203.

4. Effect on Regulation

a. Applicants' Analysis

125. Applicants assert that the Proposed Transaction will not have any adverse effect on regulation at either the federal or state level. As to federal regulation, Applicants state that Applicants and their affiliates will remain subject to the Commission's jurisdiction and regulations under the FPA to the same extent that they are currently subject to such jurisdiction and regulation. As to state regulation, Applicants explain that, following the Proposed Transaction, PPL Electric will remain subject to regulation by the Pennsylvania Commission to the same extent it is currently regulated; LG&E will remain subject to regulation by the Kentucky Public Service Commission (Kentucky Commission); and KU will remain subject to regulation by the Kentucky Commission, Virginia State Corporation Commission, and the Tennessee Regulatory Authority to the same extent that it is currently regulated by these regulatory bodies. Applicants add that, to the extent there is any state regulation of siting or competitive retail sales, such state regulation will remain unchanged.

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[132] *See Audit Report of National Grid, USA*, Docket No. FA09-10-000 (Feb. 11, 2011) at 55; *see also Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

[133] *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

[134] 16 U.S.C. § 825(c) (2012).

[135] 42 U.S.C. § 16452 (2012).

b. Commission Determination

126. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.[136] Based on the facts presented in the Joint Application, we find that neither state nor federal regulation will be impaired by the Proposed Transaction. Specifically, we find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over Applicants after consummation of the Proposed Transaction. The Proposed Transaction will not create a regulatory gap at the state level because the transmission-owning, PPL Public Utility subsidiaries are not part of the Proposed Transaction. PPL Electric will continue to be regulated by the Pennsylvania Commission; LG&E will continue to be regulated by the Kentucky Commission; and KU will continue to be regulated by the Kentucky Commission, the Virginia State Corporation Commission and the Tennessee Regulatory Authority.

127. In the Merger Policy Statement, the Commission stated that it ordinarily will not set the issue of the effect of a transaction on the state regulatory authority for a trial-type hearing where a state has authority to act on the transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission stated that it may set the issue for hearing, and that it will address such circumstances on a case-by-case basis.[137] We note that no party alleges that regulation would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect of the Proposed Transaction on state regulation.

5. Cross-Subsidization

a. Applicants' Analysis

128. Applicants assert that the Proposed Transaction will not result in proscribed cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants explain that there are no existing pledges and/or encumbrances of traditional utility assets involved in the Proposed Transaction, and the Proposed Transaction will not result in any new pledge or encumbrance of such assets. Accordingly, Applicants request a waiver of the disclosure requirement in 18 C.F.R. § 33.2(j)(1)(i). Applicants state that the Proposed Transaction will comply with section 33.2(j)(1)(ii) of the Commission's regulations, detailed below. Applicants state that the Proposed Transaction will eliminate any possibility of cross-subsidization

[136] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

[137] *Id.* at 30,125.

between PPL Corp.'s traditional and transmission-owning utilities (PPL Electric, LG&E, KU and EEInc.), on the one hand, and the PPL Energy Supply Companies, on the other, because, as a result of the Proposed Transaction, they will no longer be affiliated.[138]

129. Specifically, Applicants state that, other than the potential incidental division of property at sites where PPL Electric's facilities and PPL Energy Supply Companies' facilities are co-located, PPL Corp.'s traditional and transmission-owning public utility subsidiaries will not transfer any of their facilities in connection with the Proposed Transaction.[139] Applicants state that there is no other traditional utility or transmission owner involved in the Proposed Transaction. Accordingly, Applicants state that, except as noted, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company.[140]

130. Applicants state that PPL Corp.'s traditional or transmission-owning public utility subsidiaries will not issue new securities in connection with the Proposed Transaction. Applicants assert, therefore, that the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or

[138] Applicants note that on June 13, 2014, PPL Corp., Riverstone and their respective public utility affiliates submitted a letter informing the Commission that, as of the date of the announcement of the Proposed Transaction, they are treating each other as affiliates for purposes of the Commission's affiliate restrictions (18 C.F.R. §§ 35.39, 35.44 (2014)). Joint Application at 59 & n.181 (citing PPL Elec. Util. Corp.'s June 13, 2014 Notice of Proposed Transaction as it Relates to the Commission's Affiliate Restriction, Docket No. ER10-2010-000, *et al.*). Applicants further note that they will continue to comply with the Commission's applicable market-based affiliate restrictions after the Proposed Transaction is complete. *Id.*

[139] Joint Application at 60 & n.182**.** Applicants note that the Pennsylvania Commission will review and approve each property division as necessary or required. *Id.* (citing Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 18 (stating that applicants may demonstrate that a transaction will not result in cross-subsidization "with a showing that the proposed transaction complies with specific state regulatory protections.")).

[140] *Id.* at 60 & n.183 (citing 18 C.F.R. § 33.2(j)(1)(ii)(A) (2014)).

provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company.[141]

131. Applicants aver that PPL Corp.'s traditional or transmission-owning public utility subsidiaries will not enter into any new pledge or encumbrance of its assets in connection with the Proposed Transaction. Applicants state that there are no other traditional utilities or transmission owners involved in the Proposed Transaction. Therefore, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of the associate company.[142]

132. Applicants state that PPL Corp.'s traditional and transmission-owning public utility subsidiaries will not enter into any *new* affiliate contracts in connection with the Proposed Transaction, either at the time of the Proposed Transaction or in the future. Applicants note, however, that PPL Corp. and certain of its remaining subsidiaries will enter into a Transition Services Agreement with Talen Energy,[143] pursuant to which those PPL Corp. subsidiaries will provide certain non-jurisdictional services, such as information technology and accounting services, to Talen Energy's subsidiaries, for a time period not to exceed 24 months after the Proposed Transaction closes.[144] Applicants reiterate that there are no other traditional utilities or transmission owners involved in the Proposed Transaction. Accordingly, Applicants state that the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over

[141] *Id.* at 60 & n.184 (citing 18 C.F.R. § 33.2(j)(1)(ii)(B) (2014)).

[142] Joint Application at 61 & n.185 (citing 18 C.F.R. § 33.2(j)(1)(ii)(C) (2014)).

[143] *Id.* at 61 & n.186 (citing Exhibit I, Transaction Agreement at § 8.15). Applicants state that, although the Transaction Services Agreement will not take effect until the Applicants are no longer affiliated with PPL Corp.'s traditional and transmission-owning public utilities, to the extent that transitional services are to be provided by PPL Corp.'s traditional and transmission-owning public utilities, the pricing agreed to in the Transition Service Agreement will be consistent with applicable protections against affiliate cross-subsidization set out in 18 C.F.R. § 33.44. *Id.*

[144] *Id.* at 61 & n.187 (noting that Topaz Power Management, LP, a Riverstone affiliate, will provide certain non-jurisdictional services to the RJS Power Holdings Companies for a period not exceeding 24 months after the Proposed Transaction).

jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under FPA sections 205 and 206.[145]

b. Commission Determination

133. Based on the representations in the Joint Application,[146] we find that the Proposed Transaction will not result in an inappropriate cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

134. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

6. Other Issues

a. MEG Holdings Comments

135. MEG Holdings states that it is the prior owner of certain generating assets (Sapphire Assets) indirectly held by Sapphire Power Generation Holdings, LLC (Sapphire Holdings) that RJS Power Holdings will contribute to Talen Energy as part of the Proposed Transaction. MEG Holdings explains that, since the Commission's approval of MEG Holdings' sale of the Sapphire Assets to RJS Power Holdings in 2011, MEG Holdings has been in litigation with Sapphire Power Finance LLC (Sapphire Power Finance). MEG Holdings states that Sapphire Power Finance is a subsidiary of RJS Power Holdings. MEG Holdings states that the litigation "relates to certain indemnification and related obligations associated with the 2011 transaction."[147] Noting that the New York Supreme Court recently issued a decision in MEG Holdings' favor against Sapphire Power Finance, MEG Holdings explains that it has an interest in

[145] *Id.* at 62 & n.188 (citing 18 C.F.R. § 33.2(j)(1)(ii)(D) (2014)).

[146] *Id.* at 60-62; *see also id.*, Exh. M.

[147] MEG Holdings Comments at 2.

ensuring that RJS Power Holdings does not utilize the Proposed Transaction or resale of the Sapphire Assets to evade any pre-existing legal and financial obligations.

136. MEG Holdings asserts that, while the Joint Application is somewhat unclear as to the survival of Sapphire Power Finance, MEG Holdings believes that the Purchase and Sale Agreement clarifies that Sapphire Power Finance will continue to exist after the Proposed Transaction closes.[148] MEG Holdings states that it also believes that Sapphire Power Finance will remain responsible for its pre-existing legal and financial obligations associated with litigation stemming from the 2011 transaction.

137. MEG Holdings asks that the Commission "not alter" sections 2.07 and 7.02 of the Purchase and Sale Agreement "in connection with its review and acceptance" of the Joint Application.[149]

b. Applicants' Answer

138. Applicants point out that MEG Holdings acknowledges that its dispute with Sapphire Power Finance relates solely to its 2011 transfer of the project companies owning the Sapphire Assets to Sapphire Power Finance.[150] Applicants assert that the Proposed Transaction will not affect the dispute.[151] Applicants add that the Commission has repeatedly found that contract disputes are beyond the scope of the Commission's review under section 203.[152] Applicants contend that the Commission should not allow

[148] Specifically, MEG Holdings points out that section 201(d) of the Purchase and Sale Agreement provides that RJS Power Holding's asset contribution into Talen Energy will include contribution of all the capital stock of Sapphire Power LLC (Sapphire), the direct parent of Sapphire Power Finance. MEG Holdings Comments at 3 & n.9 (citing [Joint] Application, Exh. I, § 2.07 (d) and Exh. C-1, at 2). MEG Holdings adds that section 7.02(c)(ix) of the Purchase and Sale Agreement provides that ". . . Sapphire shall not permit any RJS Subsidiary to, adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of any RJS Subsidiary." *Id.* at 3 & n.10 (citing [Joint] Application, Exh. I, § 7.02(c)(ix)).

[149] *Id.* at 3.

[150] Applicants' Answer at 28 & n.83 (quoting MEG Holdings Comments at 2).

[151] *Id.* at 28.

[152] *Id.* at 28 & n.84; *see also id.* at 20 & nn.58-59 (citing *Montana Power Co.*, 87 FERC ¶ 61,344, at 62,329 (1999); *LenderCo.*, 110 FERC ¶ 61,044, at P 21 (2005); *James A. Goodman*, 115 FERC ¶ 61,346, at P 14 (2006)).

MEG Holdings to use its intervenor status in this proceeding to advance its position in an unrelated dispute. Applicants assert that the Commission should find MEG Holdings' comments to be irrelevant and meritless, deny MEG Holdings' requested relief, and approve the Proposed Transaction without hearing or condition.

c. Commission Determination

139. We agree with Applicants that MEG Holdings' contractual concerns are beyond the scope of this proceeding.[153] Additionally, Applicants represent that the Proposed Transaction will not affect the dispute and MEG Holdings acknowledges that the Purchase and Sale Agreement does not appear to affect the dispute or Sapphire Power Finance's preexisting legal and financial obligations. Therefore, consistent with precedent, we will not consider MEG Holdings' concerns in the context of this section 203 analysis.[154]

d. Other Obligations

140. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[155] To the extent that the foregoing authorization results in a change in status, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

141. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to section 215. Compliance with these standards is mandatory and enforceable, regardless of the physical location of the affiliates or investors, information

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[153] *See, e.g.*, *NV Energy, Inc*., 145 FERC ¶ 61,170, at P 36 (2013) (finding competitive concerns regarding transmission line beyond the scope of the 203 proceeding because the line would be constructed regardless of whether the proposed transaction was consummated).

[154] *See id.*

[155] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). *See* 18 C.F.R. § 35.42 (2014).

database, and operating systems. If affiliates, personnel, or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Proposed Transaction, as mitigated and conditioned, is hereby authorized, as discussed in the body of this order.

(B) Applicants must submit, within 30 days of the date of this order, either (1) an informational filing stating that they will commit to divest the Mitigated Assets in both Options 1 and 2 or commit to make cost-based offers; or (2) a compliance filing with an alternative mitigation proposal, as discussed in the body of this order.

(C) Applicants must 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.

(D) 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.

(E) 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.

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

(G) Applicants, to the extent they have not already done so, shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(H) Applicants shall file the executed agreement with the Independent Energy Manager within 10 days of entering into the finalized agreement and inform the Commission of the identity of the independent monitor appointed to oversee the terms of the interim mitigation within 10 days of its appointment.

(I) Applicants shall file in this docket, prior to closing of the Proposed Transaction, a statement in which Talen Energy acknowledges and agrees to be bound by the terms of the mitigation measures accepted in this order, including the mitigation measures required to address market power concerns in the 5004/5005 submarket.

(J) The independent monitor shall inform the Commission of any violations of the conditions of the interim mitigation.

(K) If Applicants seek to recover transaction-related costs through their transmission rates, they must make a filing in a new FPA section 205 docket and submit concurrently an informational filing in the instant FPA section 203 docket. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

(L) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Local Energy Markets within PJM relevant to the Proposed Transaction as defined by the Market Monitor in the Market Monitor's Report:

1. 5004/5005 Interface
2. AEP-DOM
3. AP South
4. Bagley-Graceton
5. Bedington-Black Oak
6. Benton Harbor-Palisades
7. Bergen-New Milford
8. Bergen-North Bergen
9. Bridgewater-Middlesex
10. Burlington-Croydon
11. Cedar Grove-Roseland
12. Central East
13. Clover
14. Cloverdale
15. Cook-Palisades
16. Dickerson-Pleasant View
17. Glenarm-Windy Edge
18. Graceton- Safe Harbor
19. Mt. Storm
20. Reddington-Roseland
21. Wake-Carso
22. Wescosville
23. West