



April 21, 2023

VIA E-FILING

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: Petition of Talen Energy Marketing, LLC To Maintain Its Financial Security Requirement of 5% of Its Most Recent Four Quarters of Revenue; Docket No. A-110098

Petition for Reconsideration of Staff Action of Talen Energy Marketing, LLC

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Petition for Reconsideration of Staff Action of Talen Energy Marketing, LLC.

Please contact me if you have any questions regarding this filing. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Talen Energy Marketing, LLC*

DPZ:kmg
Enclosure

cc: Paul Diskin, Director, Bureau of Technical Utility Services
Debra Raggio, Esq.

VERIFICATION

I, Debra L. Raggio, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Signature

Senior Vice President, Regulatory & External Affairs

Title

April 21, 2023

Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Talen Energy Marketing, LLC : Docket No. A-110098
To Maintain Its Financial Security Requirement of :
5% of Its Most Recent Four Quarters of Revenue :

**PETITION FOR RECONSIDERATION OF STAFF ACTION
OF TALEN ENERGY MARKETING, LLC**

NOW COMES Talen Energy Marketing, LLC (“Talen”), pursuant to 52 Pa. Code § 5.44(a), to request that the Pennsylvania Public Utility Commission (“Commission”) reconsider the staff’s decision to issue the Secretarial Letter dated April 20, 2023 (the “Secretarial Letter”) in this matter. See **Attachment 1**. The Secretarial Letter denies Talen’s 5% Annual Compliance Filing with the Commission, which requested permission to maintain Talen’s Electric Generation Supplier financial security level of 5% of its most recent four quarters of revenue. For the reasons set forth below, Talen respectfully requests that the Commission reverse the staff’s action and grant Talen’s request to maintain its financial security level of 5% of its most recent four quarters of revenue.

In support thereof, avers as follows:

I. Background and Procedural History

1. Talen is a licensed electric generation supplier (“EGS”) in the Commonwealth of Pennsylvania.
2. Talen was licensed as an EGS on September 15, 1998 at Docket No. A-110098 and has maintained its license without defaulting on any regulatory requirements since that time.

3. By Secretarial Letter of July 11, 2019, the Commission granted Talen's request to reduce its financial security with the Commission from 10% to 5% of Talen's most recent four quarters of revenue. Talen has maintained its financial security at that level since 2019.

4. Talen filed a Financial Security Reduction Annual Compliance Filing on February 15, 2023.

5. The Secretarial Letter denied Talen's request for the following reason:

The Commission finds considerable uncertainty regarding Talen Energy's ability to fulfill its future annual obligations under Section 2809 due to [Talen's] ongoing Bankruptcy Proceeding. In particular, we have concerns regarding Talen Energy's ability to fulfill its obligations related to gross receipts taxes, Alternate Energy Portfolio Standards (AEPS) and the Commission's Annual Fee levied on EGSs.

II. Staff's Decision to Deny Talen's 5% Annual Compliance Filing Should be Reversed

6. In pertinent part, 52 Pa. Code § 5.44 states:

(a) Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

7. Talen filed a response to a data request from the Commission's staff regarding Talen's bankruptcy status on February 23, 2023. Talen also filed a response to a second data request from the Commission's staff on April 6, 2023 demonstrating that Talen had made its most recent tax pre-payment. These filings provided the Commission with proof that Talen is current on its AEPS obligations, its tax obligations, and its payment of the Commission's required annual fees and supplemental annual fees.

8. Talen filed for chapter 11 protection on May 9, 2022. As such, Talen has been in bankruptcy for less than a year, and during this time Talen's ability to make timely payments of its taxes, fees and other obligations has not been impacted.

9. Talen has received regulatory approvals from the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission and, after receiving the final regulatory approval associated with Hart-Scott-Rodino, which is expected on or around May 15, 2023, Talen expects to emerge from bankruptcy very soon thereafter, on or around May 17, 2023, which date is less than a few days from the date on which the new bond is required. Talen's chapter 11 plan, which was confirmed on December 15, 2022 by the overwhelming majority of creditors across Talen's capital structure, contemplates a very clear and certain post-emergence future for Talen, including the infusion of up to \$1.9 billion of new equity capital pursuant to a common equity rights offering, \$1.55 billion of which is backstopped by various leading financial institutions, new ownership, a \$3 billion reduction in Talen's debt, full repayment of Talen's first lien funded debt, and the consensual equitization of all of Talen's existing unsecured notes. The Commission's claim of "uncertainty" pertaining to Talen's bankruptcy is, therefore, unfounded and Talen's bond should not be doubled to the financial detriment of a company on the brink of emergence from bankruptcy given that Talen's bankruptcy proceeding will continue for only a couple days following the requested bond upsize.

10. The mere fact that Talen has been in bankruptcy, without evidence of any default or delay in payment, and with emergence from bankruptcy pending imminently, does not support the conclusion that Talen's bond should be doubled because of Talen's "ongoing Bankruptcy Proceeding."

11. The Secretarial Letter quoted 66 Pa. C.S. § 28090(c) as stating that the financial security is designed "to ensure the financial responsibility of the electricity generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements."

12. Talen only has “contracts, agreements or arrangements” with its own plants, plants affiliated with Talen, and a few entities that provide services for those plants. Considering the limited number of Talen’s number of customers, and the fact that most of them are affiliated with Talen, the public interest does not require that Talen’s bond be doubled at this time.

III. Conclusion

WHEREFORE, Talen Energy Marketing LLC respectfully requests that this Honorable Commission:

- (1) Grant the instant Petition for Reconsideration from Staff Action;
- (2) Reverse the Secretarial Letter and approve Talen’s request to maintain its financial security level of 5% of its most recent four quarters of revenue; and,
- (3) Refrain from placing Talen on a License Cancellation Tentative Order while this Petition for Reconsideration of Staff Action remains pending before the Commission (on the condition that Talen maintains the existing 5% financial security), and until Talen has a reasonable opportunity to comply with the Commission’s Opinion and Order in this matter.

Respectfully submitted,



David P. Zambito, Esq. (PA ID No. 80017)
Jonathan P. Nase, Esq. (PA ID No. 44003)
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Harrisburg, PA 17101
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Email: dzambito@cozen.com
Email: jnase@cozen.com

Dated: April 21, 2023

**Attachment 1 to
Petition for Reconsideration of Staff Action**



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120
April 20, 2023

Docket No. A-110098
Utility Code: 110098

JACQUELINE FLEMING
TALEN ENERGY MARKETING LLC
600 HAMILTON STREET STE 600
ALLENTOWN PA 18101

Re: Bonding/Security Reduction for Electric Generation Suppliers

Dear Ms. Fleming:

On February 15, 2023, Talen Energy Marketing LLC (Talen Energy) filed a 5% Annual Compliance Filing with the Commission for permission to maintain its Electric Generation Supplier financial security level of 5% of its most recent four quarters of revenue.

Talen Energy filed the 5% Annual Compliance Filing pursuant to the Commission's Order entered September 20, 2018, at Docket No. P-2017-2608078.

On May 10, 2022, Talen Energy filed notice with the Commission that it has undergone a material change in its organization under Chapter 11 of the United States Bankruptcy Code on May 9, 2022.

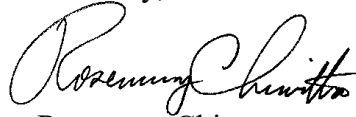
The financial security is designed "to ensure the financial responsibility of the electricity generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements¹." The Commission finds considerable uncertainty regarding Talen Energy's ability to fulfil its future annual obligations under Section 2809 due to its ongoing Bankruptcy Proceeding. In particular, we have concerns regarding Talen Energy's ability to fulfil its obligations related to gross receipts taxes, Alternate Energy Portfolio Standards (AEPS) and the Commission's Annual Fee levied on EGSs. The Commission has determined it is prudent to require Talen Energy to increase its current financial security level from 5% to 10% of its most recent four quarters of revenue because of these uncertainties.

Therefore, for the reasons stated above, Talen Energy's 5% Annual Compliance Filing is hereby **denied**.

¹ 66 Pa. C.S. Section 2809(c)(1)(i)

In accordance with 52 Pa. Code 5.44, this staff action will be deemed to be the final action of the Commission unless a petition of reconsideration is filed with the Secretary of the Commission within 20 days of the date on this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary