

The Commission may approve a contested offer of settlement only based on its merits.⁴ A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.⁵ None of the approaches under *Trailblazer Pipeline Company* can be relied on for approval of the Offer. The Offer does not resolve the issues raised in the order setting this matter for hearing.⁶ The order does not establish a just and reasonable basis for calculating a rate for an asynchronous solar facility.⁷ There is no record supporting the revenue requirement as just and reasonable, including as a “package.” The Market Monitor represents the public interest in efficient and competitive markets. The settlement cannot be analyzed under the fair and reasonable standard applicable to uncontested settlements because the public interest in efficient and competitive markets is a central issue in this proceeding. There is no possibility of severing the issues in the manner contemplated under the *Trailblazer Pipeline Company* approaches.

Although the Commission encourages settlements, that policy is not a license to resolve cases at all costs.⁸ An offer of settlement, as in this case, that is unfair, unreasonable,

⁴ 18 CFR § 385.602(h)(1) (“If the Commission determines that any offer of settlement is contested in whole or in part, by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.”)

⁵ The four approaches for approving a settlement under *Trailblazer Pipeline Company* include: (i) addressing the contentions of the contesting party on the merits when there is any adequate record; (ii) approving a contested settlement as a package on the ground that the overall result of the settlement is just and reasonable; (iii) determining that the contesting party’s interest is sufficiently attenuated such that the settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements when the settlement benefits the directly affected settling parties; or (iv) preserving the settlement for the consenting parties while allowing contesting parties to obtain a litigated result on the merits. See *Trailblazer Pipeline Company*, 85 FERC ¶ 61,345 (1998)..

⁶ *Bluestone Farm Solar, LLC*, 175 FERC ¶ 61,221 at P 13 (2021).

⁷ Whether the AEP Method applies to asynchronous solar facilities is a question under active review in Commission proceedings. See NOI at PP 20–28.

⁸ See, e.g., *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

or against the public interest must be rejected.⁹ Instead, this case should proceed to hearing so that the record can be developed and issues of material fact and law can be resolved on the merits.

Article 3.5 of the Offer's proposed settlement provides: "[T]his Settlement shall not set precedent or otherwise provide guidance for any other generating project, solar or otherwise." If the Offer is approved, it will unavoidably indicate that solar facilities like Bluestone can receive compensation for reactive capability under Schedule 2 based on a filing using the *AEP* Method, and it would further establish a benchmark rate level for storage facilities. The public interest is better served by resolution of the issues raised in this proceeding on the basis of a full evidentiary record and reasoned analysis.

In the attached affidavit of Dr. Joseph E. Bowring ("Affidavit"), included pursuant to Rule 602(f)(4), Dr. Bowring explains why the *AEP* Method does not apply to solar facilities and why the requested revenue requirement is excessive.¹⁰

The issues raised in this proceeding have significant cost implications going forward. Failing to resolve these issues risks making payments to Bluestone and similar facilities for which they are not eligible. Resolution of these issues should not be deferred. There is significantly greater administrative efficiency if new issues are resolved now, rather than after years of baseless and arbitrary settlements.

In the Affidavit, Dr. Bowring explains why the level of the annual revenue requirement is excessive. The issue of an appropriate rate level under Schedule 2 needs resolution on the merits in this case and for future cases. The Market Monitor opposes the Offer. The Offer should be rejected. Further, settlement discussions in the proceeding should be terminated, and the issues raised in this proceeding should be decided on the merits.

⁹ 496 F.3d at 701.

¹⁰ 18 CFR § 385.602(f)(4).

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Respectfully submitted,



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Dated: April 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 28th day of April, 2022.



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Attachment
Exhibit Nos. IMM-0001–0003

Bowring Affidavit
and Supporting Exhibits