

The Commission may approve a contested offer of settlement only based on its merits.³ A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.⁴ 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.⁵ 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.⁶ An offer of settlement, as in this case, that is unfair, unreasonable, or against the public interest must be rejected.⁷ Instead, this case should proceed to hearing

³ 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.”)

⁴ 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).

⁵ *Grand Ridge Energy LLC*, 177 FERC ¶ 61,128 at P 9 (2021).

⁶ See, e.g., *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

⁷ 496 F.3d at 701.

so that the record can be developed and issues of material fact and law can be resolved on the merits.

Article 9 of the Offer's proposed settlement provides: "...[N]either this Offer of Settlement nor Grand Ridge's performance in accordance herewith shall be deemed to constitute an admission or concession as to the correctness or applicability of any claim, defense, liability, rule or interpretation of law, allegation of fact, principle, or cost-of-service determination." If the Offer is approved, it will unavoidably indicate that wind facilities like the Grand Ridge Facility 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. 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 requested revenue requirement is excessive.⁸

The issues raised in this proceeding have significant cost implications going forward. Failing to resolve these issues means that customers must make payments to the Grand Ridge's Facility and similar facilities at levels exceeding the competitive and reasonable level for the facilities. 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.

⁸ 18 CFR § 385.602(f)(4).

Respectfully submitted,



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Dated: July 7, 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 7th day of July, 2022.



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Attachment
Exhibit Nos. IMM-0001–0003

Bowring Affidavit
and Supporting Exhibits