

156 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

LWP Lessee, LLC

Docket No. ER16-1923-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 12, 2016)

1. On June 14, 2016, pursuant to section 205 of the Federal Power Act¹ and Part 35 of the Commission's regulations,² LWP Lessee, LLC (LWP) submitted a proposed rate schedule (Rate Schedule), which specifies LWP's revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Supply Service) from the Lakefield wind turbine facility (Lakefield Facility).³ In this order, we accept the Rate Schedule for filing, and suspend it for a nominal period, to become effective as

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2015).

³ LWP filed this proposed Rate Schedule as an initial baseline tariff in the Commission's eTariff system (Type of Filing Code 390) in order to establish a new tariff database for its Rate Schedule. While this filing code may be used for either an initial rate or a rate change, the Commission considers the filing to be a proposed rate change under section 35.13 of the Commission's regulations. Pursuant to LWP's transmittal letter, LWP has been providing reactive power service to the Midcontinent Independent System Operator, Inc. (MISO), without charge, prior to the instant filing. *See Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338, at P 11 (2003) (stating that, as the Oneta Project has been providing reactive power service under section 3.5 of its Interconnection Agreement, albeit without charge, "the proposed rates for Reactive Power Service in the instant proceeding are not initial rates, but are changed rates").

requested on August 14, 2016, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. LWP states that it is a limited liability company organized under the laws of the State of Delaware.⁴ LWP states that it manages, operates, and controls the Lakefield Facility under a sale-leaseback financing agreement with Lakefield Wind Project, LLC (Lakefield Wind Project).⁵

3. LWP states that the Lakefield Facility is a wind turbine facility located in Jackson County, Minnesota, near the city of Lakefield, Minnesota.⁶ LWP states that the Lakefield Facility consists of 137 wind turbine generators, each with a nameplate rating of 1.5 MW, for a total nameplate capacity of 205.5 MW. LWP states that the Lakefield Facility is interconnected to transmission facilities owned by ITC Midwest, LLC (ITC Midwest), which are under MISO's operational control. LWP states that the interconnection to the ITC Midwest transmission grid is governed by a Large Generator Interconnection Agreement between Lakefield Wind Project, ITC Midwest, and MISO (Lakefield LGIA). LWP states that the Commission accepted the most recently amended version of the Lakefield LGIA on April 7, 2010, in Docket No. ER10-706.

4. LWP states that the Lakefield LGIA specifically provides that the Lakefield Facility must be capable of providing reactive power within the power factor range of 0.95 leading to 0.95 lagging.⁷ LWP states that, consistent with this requirement, the Lakefield Facility has been providing reactive power support to the MISO-operated transmission system without compensation since the Lakefield Facility commenced commercial operation in October 2011. LWP explains that the Lakefield Facility's turbines contain a power electronics system that regulates voltage and power in real time and is able to make the Lakefield Facility operate more like a conventional synchronous generator.

5. LWP states that Schedule 2 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) provides for compensation to generators that

⁴ Filing at 1.

⁵ LWP states that the Commission granted LWP market-based rate authorization in Docket No. ER11-3731-000 by letter order issued July 5, 2011.

⁶ Filing at 2.

⁷ *Id.*

provide Reactive Supply Service and meet certain technical criteria.⁸ LWP states that compensation under Schedule 2 is based on an annual, cost-based revenue requirement and/or cost-based rates that the generator must file with the Commission for acceptance. LWP states that this approach is also reflected in section 9.6.3 of the Lakefield LGIA, which states that “[p]ayments for reactive power shall be pursuant to any tariff or rate schedule . . . approved by the FERC.” LWP states that, consistent with Schedule 2 and the Lakefield LGIA, LWP is submitting the Rate Schedule for the Commission’s acceptance.

6. LWP asserts that, given that non-synchronous generators, such as the Lakefield Facility, are currently providing reactive power capability to the system, and in recognition of the benefits that such capability provides, it is appropriate for the Commission to allow non-synchronous generators to recover their costs of providing Reactive Supply Service.⁹ LWP argues that this outcome is fully consistent with the terms of the MISO Tariff, noting that Schedule 2 does not distinguish between synchronous and non-synchronous generators. LWP states that, consistent with Schedule 2 of the MISO Tariff, it is submitting a fixed revenue requirement for Reactive Supply Service from the Lakefield Facility. LWP states that the fixed revenue requirement is based on the Lakefield Facility’s costs of providing Reactive Supply Service capability and is designed to recover the portion of plant costs attributable to the reactive power capability of the Lakefield Facility, referred to as the Fixed Capability Component. LWP states that, based on the calculation of the Fixed Capability Component, the annual Reactive Supply Service revenue requirement is \$1,924,793.33 and the monthly Reactive Supply Service revenue requirement is \$160,399.44.¹⁰

7. LWP states that it calculated the Lakefield Facility’s Fixed Capability Component in accordance with the methodology for determining the cost-of-service associated with providing Reactive Supply Service capability that the Commission adopted in *American Electric Power Service Corp.*¹¹ and has applied in subsequent Reactive Supply Service

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ LWP states that it also calculated costs associated with increased heating losses associated with the actual production of reactive power. However, LWP states that, based on the Commission’s statement in *Wabash Valley Power Association*, 154 FERC ¶ 61,246 (2016) (*Wabash*) that heating losses must be calculated based on actual fuel and other variable costs, and not based on opportunity costs, LWP is not proposing to include this amount in the Lakefield Facility’s revenue requirement.

¹¹ 88 FERC ¶ 61,141 (1999), *order on reh’g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

fixed revenue requirement cases (*AEP* methodology).¹² LWP notes that the *AEP* methodology considers the costs associated with four groups of plant investments: (1) generators/excitors; (2) generator step-up (GSU) transformers; (3) accessory electric equipment; and (4) remaining production plant investment.

8. LWP argues that, although the *AEP* methodology was developed in the context of synchronous generators, it is appropriately applied to non-synchronous wind turbine facilities, such as the Lakefield Facility, as well.¹³ LWP explains that the underlying principle of the *AEP* methodology is to establish a cost-of-service for providing reactive power capability by identifying the costs of the generators/excitors, GSU transformers, and accessory electric equipment at the facility, and then allocating those costs between real and reactive power using an allocation factor. LWP asserts that this principle is equally applicable to a non-synchronous generator that is designed with the capability of providing Reactive Supply Service, such as the Lakefield Facility.

9. LWP explains that, for purposes of reactive power production, the primary difference between a synchronous generator and a non-synchronous generator is that a non-synchronous wind turbine facility consists of many more turbines and associated generator/excitors than a synchronous generator of similar capacity. LWP also notes that, due to the lack of required auxiliary and supporting equipment necessary in a conventional synchronous generator, the wind turbine generator/exciter costs constitute a higher percentage of the total plant investment than in a comparably sized synchronous generator. LWP states that, because of the higher percentage of such equipment in a wind turbine facility, the percentage of the total cost of production plant, particularly generator/exciter equipment, allocable to reactive power production in a wind turbine facility will generally be greater than that associated with a synchronous generator of similar capacity.

10. LWP argues that these differences, however, do not mean that the *AEP* methodology is not just and reasonable for purposes of determining the reactive power revenue requirement for a non-synchronous generator. LWP argues that the fact that a wind turbine facility will generally have relatively more of such equipment, and therefore a higher reactive power revenue requirement compared to a synchronous generator with an identical nameplate capacity, does not suggest that the *AEP* methodology is deficient or inapplicable. LWP argues that, to the contrary, it is appropriate that owners and operators of non-synchronous generators be able to recover all of their costs associated

¹² Filing at 5 (citation omitted).

¹³ *Id.* at 6.

with the provision of reactive power capability to the system, which are generally higher for non-synchronous generators such as wind turbine facilities than for synchronous generators.

11. LWP asserts that the amount of capability compensation provided to wind turbine facilities as a result of applying the *AEP* methodology is not unprecedented, noting that the Commission has authorized the use of the *AEP* methodology to calculate the reactive power rates for synchronous peaking generation facilities.¹⁴ LWP notes that a typical peaking unit has a capacity factor in the area of five to ten percent, while, by contrast, the Lakefield Facility has an average capacity factor of 25.2 percent based on the last four years of operations. LWP asserts that, therefore, when run-times and capacity factors are considered, the reactive power capability of a wind turbine facility is less costly than that of a typical peaking unit.

12. LWP explains that the Fixed Capability Component of the fixed revenue requirement represents the portion of the plant investment in the Lakefield Facility that can be attributed to the production of reactive power.¹⁵ LWP explains that, in order to calculate this component, as required under the *AEP* methodology, LWP identified the costs of generators/excitors, GSU transformers, and accessory electric equipment that supports the generators/excitors at the Lakefield Facility. LWP states that it also identified and allocated certain indirect cost components, such as project development, professional services, construction financing, and start-up costs, to the Fixed Capability Component based on the ratios of respective turbine generator costs to overall direct equipment costs. LWP states that it also accounted for a cash grant, in the amount of approximately \$132 million, that the Lakefield Facility received from the U.S. Department of the Treasury (Department of Treasury), as a reduction in the total costs of the Lakefield Facility. LWP states that, after identifying and isolating the generator/exciter costs, GSU transformer costs, and associated accessory electric equipment costs, it was necessary to allocate a portion of these costs to the production of reactive power. LWP states that, to do this, it calculated a 19 percent reactive power allocation factor for the Lakefield Facility.

13. LWP notes that in *Wabash* the Commission indicated that in order to support the reactive power allocator used in the *AEP* methodology, reactive power revenue requirement filings must include reactive power test reports.¹⁶ LWP states that it is

¹⁴ *Id.* at 7 (citing *Bluegrass Generation Co., L.L.C.*, 115 FERC ¶ 63,015 (2006), *order aff'g initial decision*, 118 FERC ¶ 61,214 (2007) (*Bluegrass*), *reh'g denied*, 121 FERC ¶ 61,018 (2007)).

¹⁵ *Id.*

¹⁶ *Id.* at 9 (citing *Wabash*, 154 FERC ¶ 61,246 at P 28).

currently in the process of arranging to perform a reactive power test. LWP states that, in order to meet the Commission's requirement that reactive power filings support the *AEP* reactive power allocator, LWP has included with its filing actual operational data showing the reactive power production of the Lakefield Facility on several days in 2015, including during the summer.¹⁷

14. In addition, LWP states that, consistent with the *AEP* methodology, LWP calculated the remaining power plant investment associated with reactive power production for the Lakefield Facility by multiplying the costs of total remaining production plant (adjusted to reflect the Department of Treasury grant) by an allocation factor representing the real power losses in the generators, GSU transformers, and accessory electric equipment that are required to produce reactive power. LWP states that, in order to calculate this allocation factor for the remaining production plant, LWP used a detailed power flow model for the Lakefield Facility.

15. LWP states that the total resulting investment attributable to reactive power production for the Lakefield Facility is \$14,465,466.¹⁸ LWP states that, to convert the total investment in reactive power production facilities at the Lakefield Facility to an annual revenue requirement for the Fixed Capability Component, LWP multiplied the total investment attributable to reactive power production facilities by an annual carrying cost percentage of 13.31 percent for the Lakefield Facility.

16. LWP states that, with respect to the cost of capital component of the carrying cost percentage, consistent with Commission precedent, LWP used the rate of return and capital structure for ITC Midwest, the transmission owner with which the Lakefield Facility is interconnected.¹⁹ LWP notes that, for rate year 2016, ITC Midwest is using, *inter alia*, a return on common equity of 12.38 percent. LWP acknowledges that the ITC Midwest 12.38 percent return on equity is the subject of complaint proceedings in Docket Nos. EL14-12-000 and EL15-45-000. LWP proposes that the Commission make LWP's proxy return on equity and the resulting fixed revenue requirement subject to the outcome of both complaint proceedings.

¹⁷ LWP states that, if necessary, it can provide more extensive operational data. *Id.* n.29.

¹⁸ *Id.* at 11 (citing Ex. LWP-2).

¹⁹ *Id.* at 12 (citing *Big Cajun I Peaking Power LLC*, 151 FERC ¶ 61,195, at P 10 (2015); *Bluegrass*, 118 FERC ¶ 61,214 at P 86; *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090 (2003); *Calpine Fox LLC*, 113 FERC ¶ 61,047 (2005); *Tenaska Va. Partners*, 107 FERC ¶ 61,207 (2004); *Zion Energy LLC*, 133 FERC ¶ 61,262 (2010)).

17. LWP states that it calculated the Fixed Capability Component by multiplying the total investment in reactive power production facilities, \$14,465,466, by this annual carrying cost percentage, resulting in an annual Fixed Capability Component of \$1,924,793.33.²⁰

II. Notice of Filing

18. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 40,299 (2016), with interventions or protests due on or before July 5, 2016. None was filed.

III. Commission Determination

19. We find that LWP's proposed Rate Schedule raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that LWP's proposed Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, the cost figures provided are not sufficiently detailed for the Commission to be able to evaluate and analyze the proposed revenue requirement. Accordingly, we will accept LWP's proposed Rate Schedule for filing, and suspend it for a nominal period, to be effective August 14, 2016, subject to refund. We also will establish hearing and settlement judge procedures.

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.²² The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the

²⁰ *Id.*

²¹ 18 C.F.R. § 385.603 (2015).

²² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) LWP's proposed Rate Schedule is hereby accepted for filing and suspended for a nominal period, to become effective August 14, 2016, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of LWP's proposed Rate Schedule. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is

authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.