

165 FERC ¶ 61,214  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Clean Energy Future – Lordstown, LLC

Docket No. ER19-90-000

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

(Issued December 10, 2018)

1. On October 11, 2018, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission’s regulations,<sup>2</sup> Clean Energy Future – Lordstown, LLC (CEF) submitted a proposed rate schedule (Rate Schedule)<sup>3</sup> to begin receiving payment for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) as defined in Schedule 2 of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (PJM Tariff).<sup>4</sup> In this order, we accept for filing CEF’s proposed Rate Schedule and suspend it for a nominal period, to become effective December 1, 2018, as requested, subject to refund, and set the filing for hearing and settlement judge procedures.

**I. Background**

2. Schedule 2 of the PJM Tariff provides that PJM will compensate owners of generation and non-generation resources for the capability to provide reactive power to PJM to maintain transmission voltages. Specifically, Schedule 2 states that, for each month of Reactive Service provided by generation and non-generation resources in the

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pt. 35 (2018).

<sup>3</sup> Clean Energy Future – Lordstown, LLC, Reactive Power Tariff, [CEF – Lordstown, Reactive Power Tariff, 0.0.0](#).

<sup>4</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0). CEF has been providing reactive power support to PJM, without charge, prior to the instant filing.

PJM region, PJM shall pay each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission.<sup>5</sup>

## II. Filing

3. CEF states that it is an exempt wholesale generator that is authorized by the Commission to sell electric power, energy, and capacity at market-based rates.<sup>6</sup> CEF states that it owns and operates the Lordstown Energy Center (Facility), an 874 MW combined cycle gas turbine generation facility located in Lordstown, Ohio. CEF states that the Facility commenced commercial operations on October 4, 2018, and is interconnected to the transmission system owned by American Transmission Systems, Inc. (ATSI) and operated by PJM. CEF states that it has not previously filed for approval of a Reactive Service tariff for the Facility and the Reactive Service revenue requirement is not included in any other utility rates.<sup>7</sup>

4. According to CEF, the proposed cost-based revenue requirement was derived using the methodology developed in Opinion No. 440<sup>8</sup> and applied in subsequent orders,<sup>9</sup> and Opinion No. 498 (*AEP* methodology).<sup>10</sup> CEF states that the proposed revenue requirement reflects the Facility's costs attributable to the production of reactive power and consists of two components: a fixed component and a variable component. CEF states that its fixed component is designed to recover the portion of the plant costs attributable to the reactive power capability of the Facility, and its variable component is designed to recover the variable operating costs attributable to incremental generator

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<sup>5</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>6</sup> CEF Filing at 2 (citing *Clean Energy Future-Lordstown, LLC*, Docket No. ER18-552-000 (Feb. 12, 2018) (delegated order)).

<sup>7</sup> Prepared Direct Testimony of Adrian Kimbrough, Ex. CEF-1 at 5.

<sup>8</sup> CEF Filing at 3 (citing *Am. Elec. Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

<sup>9</sup> CEF Filing at 3 (citing, e.g., *WPS Westwood Generation, L.L.C.*, 101 FERC ¶ 61,290, at P 14 (2002) (“[T]he Commission recommends that all generators seeking reactive recovery that have actual cost data and support use the method employed in [*AEP*]”) (citation omitted); *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025, at PP 68-73 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2008)).

<sup>10</sup> CEF Filing at 3 (citing Opinion No. 498, 121 FERC ¶ 61,025 at PP 68-73).

heating losses resulting from reactive power production.<sup>11</sup> CEF states that it uses a levelized annual carrying cost approach to develop the annual revenue requirement.<sup>12</sup>

5. CEF states that depreciation, operations and maintenance (O&M), administrative and general (A&G), income tax, taxes other than income, and accumulated deferred income taxes are included in the carrying cost rate.<sup>13</sup> CEF states that the O&M and A&G expenses reflect the average budgeted and forecasted costs for 2019 through 2021, and the income tax component was calculated using applicable state and federal tax rates. The total carrying cost percentage of 12.24 percent is applied to the cost of reactive power production facilities, \$24.5 million, to derive an annual revenue requirement for the Fixed Capability Component of approximately \$3 million.<sup>14</sup> CEF notes that because heating losses represent real power that is consumed in the production of reactive power and can be valued, that component is included in CEF's reactive service revenue requirement.<sup>15</sup> CEF states that its total annual revenue requirement for the Facility is \$3,369,258, which is comprised of CEF's total fixed capability revenue requirement of \$2,999,348 and its variable incremental heating loss revenue requirement of \$369,910.<sup>16</sup>

6. CEF states that as an independent power producer that generally is not subject to traditional utility rate regulation, it is not subject to cost-of-service accounting or the Commission's Uniform System of Accounts.<sup>17</sup> CEF states that to determine cost of capital, the Commission allows independent generators such as CEF to use the authorized rate of return and return on equity (ROE) of the utility to which the generator is interconnected.<sup>18</sup> CEF states it has incorporated in its annual carrying charge the

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<sup>11</sup> Prepared Direct Testimony of Adrian Kimbrough, Ex. CEF-1 at 7.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 18.

<sup>16</sup> *Id.* at 19.

<sup>17</sup> Transmittal at 4.

<sup>18</sup> *Id.*

Commission-approved base ROE utilized by ATSI, less the 50 basis point adder allowed for ATSI participation in a regional transmission organization.<sup>19</sup>

7. CEF requests waiver of the 60-day notice requirement, stating that the requested effective date of December 1, 2018 is consistent with PJM's practice of incorporating new revenue requirements into Schedule 2 of its PJM Tariff on the first day of the month in which the Commission accepts or approves the revenue requirement.<sup>20</sup>

### **III. Notice and Responsive Pleadings**

8. Notice of CEF's October 11, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 52,826 (2018), with interventions and protests due on or before November 1, 2018. PJM, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, Perennial Lordstown, LLC, and American Municipal Power, Inc. filed timely motions to intervene.

### **IV. Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

10. Our preliminary analysis indicates that CEF'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. CEF's filing 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. Accordingly, we accept CEF's proposed Rate Schedule for filing and suspend it for a nominal period to become effective December 1, 2018, as requested, subject to refund, and establish hearing and settlement judge procedures.

11. Although we are setting the Rate Schedule for hearing in its entirety, we note that CEF has failed to provide underlying cost support for the new facility. In addition, the accessory electrical equipment, O&M, and A&G costs appear to be excessive, and CEF

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<sup>19</sup> *Id.* (citing *Settlers Trail Wind Farm, LLC*, 162 FERC ¶ 61,211, at P 30 (2018)).

<sup>20</sup> *Id.* at 1-2.

has not provided any explanation of the components included in the accessory electrical equipment. We also note that the generator and exciter costs calculated from the turbogenerator costs for units CT11 and CT12 appear to be excessive. Further, CEF's heating losses calculation is unsupported since it includes variable O&M which is not explained or supported and the hours of actual reactive power production are also not supported.<sup>21</sup>

12. While we are setting this matter 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.<sup>22</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>23</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the 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) CEF's proposed Rate Schedule is hereby accepted for filing and suspended for a nominal period, to become effective December 1, 2018, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant

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<sup>21</sup> Commission precedent requires that recovery of variable costs related to heating losses be based on "the actual amount of heating loss costs incurred based on the [megawatt (MW)]-hours of actual reactive power production." Opinion No. 498, 121 FERC ¶ 61,025 at PP 70-71.

<sup>22</sup> 18 C.F.R. § 385.603 (2018).

<sup>23</sup> 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 (5) 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>).

to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of CEF's Rate Schedule, as discussed in the body of this order. However, the hearing shall 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 (2018), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding 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 participants 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 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 this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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. Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.