

139 FERC ¶ 61,192  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Linden VFT, LLC

Docket No. ER12-1419-000

ORDER ACCEPTING UNCONTESTED AGREEMENTS  
AND GRANTING LIMITED WAIVER

(Issued June 8, 2012)

1. On March 30, 2012, as amended on May 8, 2012, Linden VFT, LLC (Linden VFT) submitted a petition for approval of two settlement agreements (Agreements) on behalf of itself and Consolidated Edison Energy, LLC (Con Edison) and Public Service Energy Resources & Trade LLC (PSEG), respectively (collectively, Buyers), and a request for limited waiver of Schedule 16 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) (PJM Tariff Schedule 16). In this order, the Commission accepts the two uncontested Agreements, and grants the request for a limited waiver of PJM Tariff Schedule 16, to the extent necessary.

**I. Background**

2. Linden VFT's Customers take service across Linden VFT's variable frequency transformer (VFT facilities).<sup>1</sup> The VFT facilities create additional transfer capability between PJM and the New York Independent System Operator, Inc. (NYISO). The VFT capacity is governed by both the PJM Tariff and the TSR Agreements.

3. Linden VFT and the Customers disagree as to whether Linden VFT may pass through to the Customers certain charges (i.e., Service Administration Charges and Transmission Enhancement Charges) described in PJM Tariff Schedule 16 and billed

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<sup>1</sup> Linden VFT is party to Firm Transmission Scheduling Rights Purchase Agreements (TSR Agreements), as amended, with Con Edison, PSEG (as a successor to Conectiv Energy Supply, Inc.), Cargill Power Markets, LLC (Cargill) and Brookfield Energy Marketing Inc. (Brookfield) (collectively, Customers). Two of the Customers, i.e., the Buyers, have settled with Linden VFT. It is their settlements that are at issue here.

pursuant to the TSR Agreements (collectively, Charges)<sup>2</sup> that PJM has imposed and continues to impose on Linden VFT since these Customers first took service under the TSR Agreements. This disagreement has resulted in a billing dispute.

4. Linden VFT explains that its four Customers paid into escrow the amounts Linden VFT billed under the TSR Agreements. Linden VFT also explains that it engaged in negotiations with each of its Customers to resolve the billing dispute. Linden VFT reached agreements with Con Edison and PSEG, i.e., the Buyers, resolving the dispute between them. Linden VFT states that it was unsuccessful in its attempt to settle with Cargill and Brookfield.

5. In a related filing, on November 19, 2009, the Commission issued Opinion No. 503 in Docket No. ER06-456-022, *et al.*, largely affirming the ALJ's Initial Decision<sup>3</sup> regarding PJM's proposal for allocating a portion of the costs of transmission upgrades approved as part of PJM's Regional Transmission Expansion Plan (RTEP) to merchant transmission facilities and owners (including Linden VFT) and directed PJM to submit a Compliance Filing.<sup>4</sup> This allocation is reflected in Schedule 12 of PJM's Tariff. The parties in this proceeding protested, and filed answers, regarding certain aspects of the compliance filing in Docket No. ER06-456-022. The Customers opposed Linden VFT's protest arguing that PJM's Filing was fully compliant with Opinion 503 and the Initial Decision (Customers' Answer).<sup>5</sup> Pursuant to the Agreements, Con Edison withdrew from the Customers' Answer on February 1, 2012;<sup>6</sup> PSEG withdrew on February 13, 2012.<sup>7</sup> Cargill and Brookfield clarified on February 14, 2012, that they have not withdrawn from the Customers' Answer.<sup>8</sup>

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<sup>2</sup> Linden VFT Transmittal Letter, March 30, 2012, at page 2.

<sup>3</sup> *PJM Interconnection, L.L.C.*, 124 FERC ¶ 63,022 (2008) (Initial Decision).

<sup>4</sup> *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,161 (2009) (Opinion No. 503).

<sup>5</sup> Motion for Leave to Answer and Answer of Consolidated Edison Energy, Inc., Conectiv Energy Supply, Inc., Cargill Power Markets, LLC and Brookfield Energy Marketing Inc., Docket No. ER06-456-022 *et al.*, Mar. 29, 2010.

<sup>6</sup> Motion to Withdraw Answer of Consolidated Edison Energy, Inc., Docket No. ER06-456-022, *et al.*, Feb. 1, 2012.

<sup>7</sup> PSEG's Conditional Motion to Withdraw from Answer, Docket No. ER06-456-022, *et al.*, Feb. 13, 2012.

<sup>8</sup> Answer of Cargill Power Markets, LLC and Brookfield Energy Marketing Inc., LLC, Docket No. ER06-456-022, *et al.*, Feb. 14, 2012.

## II. The Filing

6. Linden VFT requests that the Commission approve, without condition or modification, the two Agreements, which resolve the billing dispute between Linden VFT and Con Edison and PSEG (i.e., Buyers), and a limited waiver of PJM Tariff Schedule 16, to the extent necessary.<sup>9</sup>

### A. The Agreements

7. Linden VFT states that the Agreements resolve only the disputes between Linden VFT and Con Edison and PSEG and do not affect or otherwise prejudice the ongoing dispute with Cargill and Brookfield. Linden VFT also states that the Agreements will not adversely affect payments made by the non-settling Customers to Linden VFT nor will it cause any other market participant's costs to increase.

### B. Waiver Request

8. Linden VFT states that it is requesting a limited waiver of PJM Tariff Schedule 16 out of an abundance of caution, and only to the extent required to accept or approve the Agreements because the Agreements propose payments for Charges that are less than the payments that Linden VFT believes are due under the PJM Tariff. Linden VFT also states that this waiver is not intended to address any charges imposed on Linden VFT by PJM under any PJM Tariff provisions. Linden VFT adds that the waiver applies only to the settling parties and it does not apply to or restrict the two non-settling Customers. Finally, Linden VFT states that it has been authorized to state that PJM does not object to this limited request for waiver.

### C. The Terms of the Agreements

9. The substantive provisions of the Agreements between Linden VFT and Con Edison and Linden VFT and PSEG are similar.<sup>10</sup> The major provisions provide: (1) the amounts of the Charges, which Linden VFT believes is less than what would owe under PJM Tariff Schedule 16 that each Buyer will pay to Linden VFT with respect to both the

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<sup>9</sup> The two other customers, Brookfield and Cargill, were not parties to the Agreements.

<sup>10</sup> Because the agreements are substantially similar, when referencing the major provisions of the Agreements between the parties, we are discussing both agreements.

First Settlement Period<sup>11</sup> and the Second Settlement Period;<sup>12</sup> and (2) a release of the remaining funds in escrow.

10. The filing states that the Agreements resolve, without conceding the interpretation of the TSR Agreements, the dispute between Linden VFT and the Buyers on the payment of Charges for the Settlement Periods.

11. Additionally, the Agreements state that the Buyers are obligated to withdraw their support for Customers' Answer currently pending before the Commission in Docket No. ER06-456-022, *et al.*<sup>13</sup>

### **III. Procedural Matters**

12. Linden VFT states that it filed the Agreements with the Commission pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure.<sup>14</sup> Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 21,552 (2012), with interventions and protests due on or before April 10, 2012.

13. A motion to intervene, along with comments, was filed by Cargill and Brookfield on April 10, 2012. While Cargill and Brookfield do not oppose acceptance by the Commission of the Agreements, they request that the Commission deny Linden VFT's request for a limited waiver of PJM Tariff Schedule 16.

14. Cargill and Brookfield state that the terms and conditions of the parties' TSR Agreements, rather than PJM's Tariff, govern the charges Linden VFT may impose on the Customers, and therefore, the requested waiver is unnecessary. Cargill and Brookfield further state that, because nothing in PJM's Tariff requires or allows Linden VFT to pass through costs to the Customers in contravention of the parties' contractual arrangements, no waiver of PJM's Tariff is necessary to approve the Agreements.<sup>15</sup>

15. On April 25, 2012, Linden VFT filed an Answer to Cargill and Brookfield's April 10, 2012, request that the Commission deny Linden VFT's request for a limited

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<sup>11</sup> January 23, 2007 through January 9, 2012.

<sup>12</sup> January 10, 2012 through the date that the TSR Agreement terminates or expires.

<sup>13</sup> As noted above, each Buyer has already filed to withdraw; however, PSEG's withdrawal is conditioned on the Commission's approval of its respective Settlement Agreement.

<sup>14</sup> 18 C.F.R. § 385.207(a)(5) (2011).

<sup>15</sup> Cargill and Brookfield, Motion to Intervene and Comments at 7.

waiver of PJM Tariff Schedule 16. Linden VFT states that Cargill and Brookfield have not demonstrated how granting a waiver, to the extent necessary, which does not apply to them, involves no shifting costs to them, and does not affect their pleading in another docket, causes them harm.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Linden VFT's answer because it has provided information that assisted us in our decision-making process.

#### IV. Discussion

##### A. Commission Determination

17. The Agreements resolve discrete billing issues that have existed since 2007 between Linden VFT and two of its customers and do not affect the standing of the non-participating customers with respect to the billing dispute. We find them reasonable and we will accept them. They are, we add, unopposed.

18. Linden VFT seeks a limited waiver of PJM Tariff Schedule 16, to the extent necessary, to accept or approve the Agreements. The Commission has regularly granted such waivers where: (1) the waiver was of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.<sup>16</sup> Linden VFT's request satisfies each of these criteria. Further, the Commission is not persuaded by the Cargill and Brookfield's request to deny Linden VFT's request for a limited waiver. As noted above, this waiver does not address any charges imposed by PJM under any PJM Tariff provisions and this waiver will not harm third parties, because the two non-settling Customers - Brookfield and Cargill - will not be allocated any additional costs associated with the Charges as a result of these Agreements. Additionally, granting Linden VFT's request, to the extent necessary to implement the Agreements, will not impact any proceeding currently pending before the Commission. Therefore, the Commission grants Linden VFT's request for limited waiver of PJM Tariff Schedule 16, to the extent necessary, in order to implement the Agreements.

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<sup>16</sup> See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

The Commission orders:

(A) The Agreements are hereby accepted, as discussed in the body of this order.

(B) The requested limited waiver of PJM Tariff Schedule 16 is hereby approved, to the extent necessary, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.