

127 FERC ¶ 61,181  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Cogen Technologies Linden Venture, L.L.P.

Docket Nos. ER09-910-000  
OA09-25-000  
TS09-3-000

ORDER CONDITIONALLY ACCEPTING AGREEMENT FOR FILING AND  
GRANTING CERTAIN WAIVERS

(Issued May 26, 2009)

1. This order conditionally accepts for filing, subject to a further compliance filing, a proposed shared facilities agreement between Cogen Technologies Linden Venture, L.L.P. (Linden Venture) and its affiliate Linden VFT, LLC, governing the operation of a 345 kV cable system interconnecting Linden Venture with the New York Independent System Operator, Inc. (NYISO). The Commission also grants Linden Venture's request for waiver of certain requirements of Order No. 888,<sup>1</sup> Order No. 889<sup>2</sup> and Order No. 890,<sup>3</sup> the Standards of Conduct requirements of Part 358 of the Commission's

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<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC

(continued)

regulations,<sup>4</sup> and various accounting and reporting requirements under Parts 34, 41, 50, 101 and 141 of the Commission's regulations.<sup>5</sup>

## **I. Background**

2. Linden Venture is a Delaware limited partnership and an affiliate of East Coast Power Linden Holding, L.L.P. (Linden Holding), Linden VFT, LLC (Linden VFT), General Electric Capital Corporation, and General Electric Company. Linden Venture and Linden Holding own, and Linden Venture operates, a gas-fired combined cycle qualifying cogeneration facility (QF) in Linden, New Jersey (Linden Cogen), which consists of five gas-fueled combustion turbine-generator units and three steam turbines (Linden 1-5). Linden 1-5 are connected to a 345 kV gas-insulated substation (GIS) ring bus and to a 900 MW 8,500-foot underground 345 kV fluid-filled pipe cable system, which leads to the NYISO at the Consolidated Edison Company of New York, Inc.'s (Con Edison) Goethals Substation, in Staten Island. Linden Cogen also consists of a sixth gas-fueled combustion turbine-generator (Linden 6), which is connected to the PJM Interconnection, L.L.C. (PJM) via the ConocoPhillips Company's Bayway Refinery.

3. Linden Venture's affiliate, Linden VFT, is constructing a merchant transmission facility (the Project), also located in Linden, New Jersey, which will consist of three 100 MW variable frequency transformers, approximately 1000 feet of new transmission line, connected in parallel, associated transmission facilities and equipment that will be connected to an existing 230 kV transmission line that bisects the property of Linden Venture's cogeneration facility, and certain rights to incremental transmission capacity on Linden Venture's approximately 8,500-foot existing underground 345 kV oil filled pipe-type cable.<sup>6</sup> The Project will have a total electrical transmission transfer capacity (TTC) of 300 MW. Linden VFT will also have a 230 kV transmission line to connect the

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Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

<sup>4</sup> 18 C.F.R. Part 358 (2008); *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

<sup>5</sup> 18 C.F.R. Parts 34, 41, 51, 101, 141 (2008).

<sup>6</sup> The existing transmission capacity of the 345 kV oil filled cable will be increased from 900 MW to 1,200 MW through the addition of an air-cooling system (i.e., a radiator) to the system for circulating dielectric fluid through the annular space surrounding the cable. Applicants state that the additional 300 MW will be available to Linden VFT for merchant transmission service.

Project to PJM, from which power will be withdrawn and delivered to the NYISO using Linden Venture's 345 kV cable system. Linden Venture and Linden VFT are also parties to a Shared Facilities and Coordinated Transmission Agreement and Indemnity Between Linden VFT, LLC and Cogen Technologies Linden Venture, L.P. (Facilities Agreement), that provides for Linden Venture to operate the 345 kV cable and for Linden VFT the right to make the 300 MW of merchant transmission capacity created by the Project on Linden Venture's existing 345 kV cable available for merchant transmission purposes. Linden Venture states that Linden VFT has previously been granted authority under section 205 of the FPA to sell transmission rights for the 300 MW of merchant transmission capacity for the Project at negotiated rates.<sup>7</sup> The Project is operated by Linden Venture and partly owned by Linden VFT, which also controls the rights to 300 MW of associated merchant transmission capacity.

## II. Filing

4. On March 27, 2009, as supplemented on April 28, 2009, Linden Venture filed the Facilities Agreement under section 205 of the Federal Power Act. Linden Venture explains that under the Facilities Agreement, Linden VFT will interconnect with Linden Venture's 345 kV cable system that, in turn, interconnects with Con Edison's transmission facilities in the NYISO market. Linden Venture also states that Linden VFT will pay for any incremental expenses that Linden Venture incurs to operate and maintain the Project's merchant transmission capacity in addition to an annual fixed charge of \$1 million.<sup>8</sup>

5. Linden Venture asks that the Commission accept the Facilities Agreement with an effective date of May 26, 2009,<sup>9</sup> because Linden Venture expects to deliver test power

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<sup>7</sup> *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007) (*Linden VFT*).

<sup>8</sup> Linden Venture, April 28, 2009, Supplement, Docket No. ER09-910-000, at 1. In its initial filing on March 27, 2009, Linden Venture requested that the Commission grant waiver of the requirements in Part 35 of the Commission's regulations to provide cost support for charges under the Facilities Agreement. However, Linden Venture subsequently provided that cost support information in its April 28, 2009 supplemental filing. Therefore, the Commission deems Linden Venture's request for waiver of Part 35 of the Commission's regulations to be withdrawn.

<sup>9</sup> Linden Venture, March 27, 2009, Shared Facilities and Coordinated Transmission Agreement and Indemnity, Docket No. ER09-910-000, at 1 (Request).

over the Project on June 15, 2009.<sup>10</sup> Linden Venture also asks the Commission to accept the interest rate set forth in the Facilities Agreement.<sup>11</sup>

6. In addition, Linden Venture requests waiver of certain requirements of Order Nos. 888, 889 and 890 with respect to the 300 MW of merchant transmission capacity on the 345 kV cable system that the Project creates, on the grounds that Linden Venture's facilities are limited and discrete transmission facilities, which are not an integrated component of any electricity grid. While Linden Venture acknowledges that the Project will act as a limited transmission line to interconnect PJM with the NYISO, Linden Venture emphasizes that operational control and transmission service over the Linden VFT Project will be exercised by PJM and provided pursuant to the PJM OATT.<sup>12</sup> Linden Venture will operate the 345 kV cable to allow Linden VFT to make the 300 MW merchant transmission capacity created by the Project available for merchant transmission purposes, as approved by the Commission. Consequently, Linden Venture asserts that its request with respect to the 300 MW of merchant transmission capacity should be granted as consistent with Commission policy.

7. Pursuant to section 358.1(d),<sup>13</sup> Linden Venture also requests waiver of the Standards of Conduct requirements in Part 358 of the Commission's regulations on the ground that its transmission facilities are limited, discrete and controlled by PJM. In support, Linden Venture highlights past instances where the Commission has granted waivers for similar facilities.<sup>14</sup>

8. Finally, Linden Venture requests waiver of the requirements of Parts 34, 35, 41, 50, 101 and 141 of the Commission's regulations. Linden Venture notes that it is already exempt from these requirements with respect to its sales activities as a qualifying cogeneration facility; however, it also requests waiver with respect to its transmission service under the Shared Facilities Agreement. Linden Venture argues that application of these requirements would further none of the Commission's regulatory goals and disproportionately burden Linden Venture.

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<sup>10</sup> Linden Venture Supplement at 1, 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Linden VFT*, 119 FERC ¶ 61,066 at P 18.

<sup>13</sup> 18 C.F.R. § 358.1(d) (2008).

<sup>14</sup> Linden Venture cites *Neptune Reg'l Transmission Sys., L.L.C.*, 120 FERC ¶ 61,090 (2007) (*Neptune*) and *Alcoa Power Generating, Inc.*, 108 FERC ¶ 61,243, at P 23-28 (2004) (*Alcoa*) in support of its request.

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

9. Notice of Linden Venture's filing was published in the *Federal Register*, 74 Fed. Reg. 15,962 (2009), with protests or motions to intervene due on or before April 17, 2009. None were filed.

10. Notice of Linden Venture's supplemental filing was published in the *Federal Register*, 74 Fed. Reg. 21,800 (2009), with protests or motions to intervene due on or before May 14, 2009. On May 4, 2009, the Commission issued Notice, by Errata, shortening the comment period to May 7, 2009. No protests or motions to intervene were filed.

### **IV. Discussion**

#### **A. Section 205 Filing – Facilities Agreement**

11. The Commission conditionally accepts, subject to a further compliance filing, the Facilities Agreement to become effective on May 26, 2009, as requested by Linden Venture. The Facilities Agreement governs the use of Linden Venture's 345 kV cable system to facilitate the sale of transmission rights by Linden VFT, which the Commission has previously approved in Docket No. ER07-543-000.<sup>15</sup> With the revisions required below, the Commission finds the terms and conditions of the Facilities Agreement to be just, reasonable and not unduly discriminatory.

12. Article 9 of the Facilities Agreement governs invoice disputes. However, it does not provide Linden VFT the option to pay any disputed amounts into an escrow account, pending resolution of the dispute. We require inclusion of this option and direct Linden Venture to submit a compliance filing within 30 days including an escrow provision.<sup>16</sup>

13. Article 1.1 of the Facilities Agreement defines the interest rate as two percent over the Prime Rate, provided that the interest rate shall not exceed the maximum rate permissible under the laws of the State of New Jersey. However, Section 35.19a of the Commission's regulations requires that, for the purpose of calculating refunds under

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<sup>15</sup> See *Linden VFT*, 119 FERC ¶ 61,066 at P 47.

<sup>16</sup> For an acceptable escrow provision, see *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Appendix C, LGIA art. 12.4 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

suspension orders, interest shall be computed at an average prime rate for each calendar quarter on all excessive rates or charges. This average shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's "Selected Interest Rates" (Statistical Release G. 13), for the fourth, third, and second months preceding the first month of the calendar quarter. Such interest shall be compounded quarterly.<sup>17</sup> We therefore direct Linden Venture to revise its interest rate applicable to overdue payments and escrow amounts to be consistent with section 35.19a in a compliance filing within 30 days.

14. Finally, Article 17.1 of the Facilities Agreement contains Linden Venture's confidentiality provision. While we generally accept the obligations of confidentiality as set forth therein, we find that the provision fails to afford the Commission sufficient and clear authority to request information from either party. Therefore, we direct Linden Venture to revise section 17.1 to provide for such authority within 30 days.<sup>18</sup>

#### **B. Waiver of Order Nos. 888, 889 and 890**

15. Order Nos. 888 and 890 require all public utilities that own, control or operate facilities for transmitting energy in interstate commerce to file and provide service pursuant to an OATT. Order No. 889 requires such public utilities to provide certain types of information regarding their transmission systems on an Open Access Same-time Information System (OASIS). In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements to have an OATT on file and establish an OASIS.<sup>19</sup>

16. Specifically, the Commission may grant requests for waiver of Order Nos. 888 and 890 to public utilities that can show that they own, operate or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date

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<sup>17</sup> 18 C.F.R. § 35.19a (2008).

<sup>18</sup> For an acceptable provision, *see supra* note 16, LGIA art. 22.1.10.

<sup>19</sup> *See, e.g., Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 23 (2005); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*). *See also Alcoa Power Generating, Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa*, 108 FERC ¶ 61,243 at P 27.

of the request, and must comply with any additional requirements that are effective on the date of the request.<sup>20</sup>

17. The Commission has determined that waiver of the OASIS requirements of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that waiver would not be justified.<sup>21</sup>

18. Based on the statements in Linden Venture's filing, we find that the 300 MW of merchant transmission capacity is a limited and discrete transmission facility that does not form an integrated grid. Our limited and discrete finding here is based on our understanding that Linden VFT is the only party having rights to the 300 MWs of merchant transmission capacity between PJM and NYISO, that such rights are made available by Linden Venture to Linden VFT pursuant to the Facilities Agreement, that Linden VFT will make all such transmission capacity available on a merchant basis pursuant to the PJM OATT and that there is no other transmission capacity available on this transmission facility between PJM and NYISO other than that made available to Linden VFT. Based on the pleadings, Linden Venture will not be selling any of the increased transmission capacity associated with the Linden VFT Project (other than making the 300 MWs of merchant capacity available to Linden VFT). Modifications to Linden Venture's existing 345 kV transmission facilities will create 300 MW of merchant transmission capacity for the Project, which will be sold by Linden VFT pursuant to Commission authorization.<sup>22</sup> In light of these circumstances and given our understanding of the facts described herein, we will grant Linden Venture waiver from the OATT and OASIS requirements of Order Nos. 888 and 890, and Order No. 889.<sup>23</sup>

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<sup>20</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>21</sup> *Id.*

<sup>22</sup> *See Linden VFT*, 119 FERC ¶ 61,066 at P 46-47.

<sup>23</sup> A waiver of the requirement to establish and maintain an OASIS remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain from Linden Venture information necessary to complete its evaluation. In addition, and consistent with *Black Creek*, Linden Venture must file, within 60 days of its receipt of a request for transmission service over the subject facilities from a customer other than PJM or Linden VFT, a *pro forma* OATT in compliance with Order No. 890, and any additional requirements. The Commission observes that transmission service over the Project will

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### C. Waiver of Standards of Conduct

19. Linden Venture requests waiver of the Standards of Conduct under Part 358 of the Commission's regulations on the ground that it controls limited and discrete transmission facilities, and because Linden VFT has transferred operational control over its merchant transmission facilities to PJM.<sup>24</sup> As discussed above, Linden Venture will make available to Linden VFT 300 MW of transmission capacity as part of the Linden VFT Project connecting PJM with NYISO. Linden Venture notes that it will operate the 345 kV cable system to allow its affiliate, Linden VFT, to have excess transmission capacity created by the Project for merchant transmission. Linden Venture will not sell any of the 300 MW of merchant transmission capacity created on the 345 kV line (other than making the 300 MWs of merchant transmission capacity available to Linden VFT). Finally, Linden Venture points out that the merchant transmission service provided over the 300 MW of merchant transmission capacity will be provided pursuant to the PJM OATT.<sup>25</sup> As such, and based on our understanding described in the prior paragraph, the Commission finds that Linden Venture controls only limited and discrete transmission facilities and grants Linden Venture waiver of the Standards of Conduct.<sup>26</sup>

### D. Waiver of Other Regulations

20. Linden Venture seeks waiver of Parts 34, 41, 50, 101 and 141 of the Commission's regulations, asserting that their application to Linden Venture's

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be provided pursuant to PJM's OATT and that use of such capacity will be scheduled by PJM, through Linden VFT. *See* Linden Venture Request at 5 & n.17. *See also Neptune*, 120 FERC ¶ 61,090 at P 8.

<sup>24</sup> Linden Venture cites *Neptune*, 120 FERC ¶ 61,090 at P 8 and *Alcoa*, 108 FERC ¶ 61,243 at P 23-28.

<sup>25</sup> Linden Venture Request at 5.

<sup>26</sup> A waiver from the Standards of Conduct will remain in effect unless and until the facts upon which the Commission relied in granting the waiver have changed such that a utility no longer meets the sales threshold applied to determine eligibility for the waiver, or the facilities owned, operated or controlled by the utility may no longer be "limited and discrete." In that case, the Commission must reconsider whether waiver of the Standards of Conduct remains appropriate for the utility. To that end, public utilities that qualified for waiver of the requirements of Part 358 of the Commission's regulations must notify the Commission of any material changes in facts that the Commission relied on when it granted the waiver. *See Material Changes in Facts Underlying Waiver of Order No. 889*, 127 FERC ¶ 61,141, at P 5 (2009).

transmission service under the Facilities Agreement would not further the regulatory goals of the Commission and would unduly burden Linden Venture. The Commission will grant the above requested waivers in light of the nature of Linden Venture's operations. Notwithstanding the waiver of the accounting and reporting requirements here, we expect Linden Venture to keep its accounting records in accordance with generally accepted accounting principles.

The Commission orders:

(A) The proposed Facilities Agreement filed by Linden Venture in Docket Nos. ER09-910-000, OA09-25-000 and TS09-3-000 is hereby accepted, subject to the conditions discussed in the body of this order, to become effective on May 26, 2009.

(B) Linden Venture's requests for waiver of the requirements of Order Nos. 888, 889 and 890, and Parts 34, 41, 50, 101, 141 and 358 of the Commission's regulations are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.