

127 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER09-996-000

ORDER CONDITIONALLY ACCEPTING REVISED TARIFF SHEETS

(Issued June 12, 2009)

1. On April 15, 2009, PJM Interconnection, L.L.C. (PJM), on behalf of Linden VFT, LLC (Linden VFT) submitted for filing: (1) a new schedule 16 to the PJM Open Access Transmission Tariff (PJM OATT) providing the terms and conditions for transmission service on the Linden VFT facility; (2) tariff sheets amending attachments L and T of the PJM OATT to include Linden VFT as a PJM Transmission Owner and to add the Linden VFT facility as a merchant transmission facility; and (3) a signature page and revised attachment A to the PJM Consolidated Transmission Owners Agreement (Transmission Owners Agreement) adding Linden VFT to the list of PJM Transmission Owners.¹ As discussed below, the Commission conditionally accepts the revised tariff sheets and Transmission Owners Agreement effective June 15, 2009, as requested by PJM.

I. Background

2. Linden VFT is a Delaware limited liability company that was formed to develop and construct a fully controllable, alternating current, merchant transmission line that will include 350 feet of new 230 kV transmission line and 1000 feet of new 345 kV transmission line with a capacity of 300 MW connecting PJM and the New York Independent System Operator, Inc. (NYISO). The Linden VFT facility will include three new variable frequency transformers (VFT) and will be built adjacent to an existing qualifying cogeneration facility (Linden Cogen). PJM states that the Linden VFT facility is presently under construction and scheduled to go into service in December 2009, with test energy scheduled to flow on or about June 15, 2009.

¹ Capitalized terms not defined in this order have the meaning assigned to them in the PJM OATT.

3. In an order issued April 19, 2007,² the Commission authorized Linden VFT to charge negotiated rates for its merchant transmission proposal. The Commission found that the Linden VFT facility met the criteria for merchant transmission projects because service will be provided under PJM's OATT and PJM will have operational control over the Linden VFT Facilities, thereby eliminating concerns of undue discrimination or affiliate abuse.³

II. Proposal

4. PJM's proposal includes a new schedule 16 to the PJM OATT, which provides the terms and conditions for transmission service over the Linden VFT facility. PJM states that, under schedule 16, in order to schedule service over the Linden VFT facility, an entity must be an eligible customer under the PJM OATT, execute a Linden VFT Transmission Service Agreement⁴ and hold a Linden VFT reservation. PJM states that, under section 3.1 of schedule 16, a Linden VFT reservation is a prerequisite to scheduling capacity or energy on the Linden VFT facility. In addition, PJM states that, under section 4.6 of schedule 16, in order to schedule transmission service on the Linden VFT facility, a customer must have both a Linden VFT reservation and Transmission Service Agreement under Part II or Part III of the PJM OATT for delivery of energy and/or capacity to the Linden VFT facility.

5. Under proposed section 3.4 of schedule 16, Linden VFT reservations are allocated to the Primary Rights Holders. Schedule 16 defines a Primary Rights Holder as an entity that has been allocated rights to the use of the transmission capability of the Linden VFT Facility and assigned Firm and Non-Firm Transmission Withdrawal Rights by the Linden VFT Transmission Owner in accordance with the Commission Approved Allocation Process.⁵ Under the proposed schedule, third parties may acquire reservations through assignments or through voluntary or default releases of Linden VFT reservations by a Primary Rights Holder. Under section 3.6, a reseller of a Linden VFT reservation will

² *Linden VFT, LLC*, 119 FERC ¶ 61,066 (*Linden VFT*), order on clarification, 120 FERC ¶ 61,242 (2007).

³ *Linden VFT*, 119 FERC ¶ 61,066 at P 18.

⁴ The *pro-forma* Transmission Service Agreement is attached as Exhibit A to Schedule 16.

⁵ See section 1.7 of schedule 16. PJM states that the rights to transmission capability over the Linden VFT facility will be allocated to the Primary Rights Holders in accordance with the open season process initially approved by the Commission in Docket No. ER07-543-000, as may be amended from time to time.

remain liable for the performance of all obligations under the Linden VFT service agreement.

6. Section 9 of schedule 16 sets forth the cost responsibility for three categories of PJM transmission service charges. This section states that the Linden VFT Transmission Customer⁶ is responsible for congestion and loss charges, redispatch costs, transitional revenue neutrality charges, scheduling, administrative, hardware or software upgrade charges, control area or administrative services charges, or ancillary service charges (collectively, Service Administration Charges). Section 9 also states that the Primary Rights Holder is responsible for Transmission Enhancement Charges and any other construction, maintenance, and operation or upgrading of the transmission system for withdrawals of energy or capacity (collectively, Other Charges). Under section 9, any failure of a Linden VFT Transmission Customer or a Primary Rights Holder to pay any of the charges referenced in section 9 shall be deemed a failure to pay by the Linden VFT Transmission Owner.

7. Specifically, section 9 states that in the event that any Service Administration Charges are billed by PJM to the Linden VFT Transmission Owner, the Linden VFT Transmission Owner “may bill” the Linden VFT Transmission Customer for such charges, and the Linden VFT Transmission Customer shall pay PJM, on behalf of the Linden VFT Transmission Owner, these charges as a condition of receiving transmission service over the Linden VFT facility. Similarly, section 9 states that in the event that any Transmission Enhancement Charges under Schedule 12 of the PJM OATT are charged to the Linden VFT Transmission Owner, the Linden VFT Transmission Owner “may bill” the Primary Rights Holders, and the Primary Rights Holders shall pay PJM such charges, on behalf of the Linden Transmission Owner, as a condition of receiving transmission service over the Linden VFT facility. Finally, section 9 states that in the event that any Other Charges assessed by PJM to the Linden VFT Transmission Owner for use of the Linden VFT facility for withdrawals of energy or capacity for the Transmission System, the Linden VFT Transmission Owner “may bill” the Primary Rights Holders, and the Primary Rights Holders shall pay PJM, on behalf of the Linden Transmission Owner, such charges as a condition of receiving transmission service over the Linden VFT facility.

⁶ A Linden VFT Transmission Customer is defined as an entity that: (i) is an Eligible Customer (or its Designated Agent) that meets creditworthiness requirements and is in good standing with respect to all payments owed under the PJM OATT and Operating Agreement; (ii) executes a Linden VFT Service Agreement; (iii) holds a Linden VFT Reservation, and, in the case of a resale of a Linden VFT Reservation, (iv) has the applicable attachment A-1 completed and signed by all parties. *See* section 1.2 of schedule 16.

8. Curtailment of the Linden VFT schedules is governed by section 4.5 of schedule 16, which states that curtailments shall be made in accordance with the NERC Reliability Standards and the Joint Emergency Operating Protocol for the Linden VFT Scheduled Line. PJM states that the Joint Emergency Operating Protocol is among PJM, Linden VFT, Linden Venture, Consolidated Edison Company of New York, Inc. (Con Edison), and the NYISO. PJM states that the Joint Emergency Operating Protocol sets forth how the parties will manage post-contingency flows and the combined schedules for the actual output of Linden Cogen and the Linden VFT facility for a specific emergency contingency within NYISO, consistent with an operating exception currently applicable to Linden Cogen, while satisfying all applicable reliability standards and rules.

9. PJM also proposes to amend attachment T of the PJM OATT by including the Linden VFT Facility in the list of Merchant Transmission Facilities. PJM also proposes to amend the list of Transmission Owners in attachment L of the OATT to include Linden VFT. Finally, PJM submits a signature page to the Transmission Owners Agreement executed by Linden VFT and a revised attachment A to the Transmission Owners Agreement adding Linden VFT to the list of PJM Transmission Owners.

10. PJM requests an effective date of June 15, 2009 for the proposed tariff sheets and Transmission Owner Agreement sheets. PJM explains that the anticipated commencement date for interconnection service is June 15, 2009, the date on which test energy is scheduled to flow on the Linden VFT facility.

III. Notice of Filing and Responsive Pleadings

11. Notice of PJM's filing was published in the *Federal Register*, 74 Fed. Reg. 18,571 (2009), with interventions and protests due on or before May 6, 2009. Linden VFT, the PHI Companies,⁷ and Dominion Resources Services, Inc. filed motions to intervene. The VFT Right Holders⁸ filed a motion to intervene and request for clarification.⁹ Linden VFT and PJM filed answers to the VFT Rights Holders' protest.

⁷ The PHI Companies include: Potomac Electric Power Company; Delmarva Power & Light Company; Atlantic City Electric Company; Conectiv Energy Supply, Inc.; and, Pepco Energy Services, Inc.

⁸ The VFT Right Holders include: Conectiv Energy Supply, Inc.; Cargill Power Markets, LLC; Consolidated Edison Energy, Inc.; and Brookfield Energy Marketing Inc.

⁹ Based on its content, we deem the "request for clarification" to be a protest filed under Rule 211.

Request for Clarification

12. The VFT Right Holders request that the Commission clarify that the proposed schedule 16 does not abrogate or modify Linden VFT's existing contracts with its transmission customers, and that any allocation of costs to Linden VFT's customers must be permitted by the existing contracts between Linden VFT and its customers. Specifically, the VFT Right Holders state that PJM's description in its transmittal letter of section 9 of the schedule 16 is incorrect, and that the actual language of section 9 indicates that Linden VFT may assess its customers those charges set forth in section 9 only if permitted to do so by the existing contract¹⁰ between Linden VFT and its transmission customers. The VFT Right Holders state that this is the reason that section 9 of schedule 16 states that Linden VFT "may bill" the Transmission Customers or the Primary Rights Holders such charges, and that this "may bill" language is consistent with similar language accepted by the Commission for the Neptune Regional Transmission System, LLC merchant transmission project (Neptune Project).¹¹

Answers

13. On May 19, 2009, Linden VFT filed an answer to the VFT Right Holders' request for clarification. In its answer, Linden contends that there is no need for the Commission to address, in this proceeding, the effect of the schedule 16 on the VFT Right Holders' contract rights. Linden states that the contractual arrangements between Linden VFT and its customers, the Firm Transmission Rights Scheduling Agreement, do not govern whether the VFT Right Holders are liable for PJM Transmission Enhancement Charges. Linden states that the Commission has set this issue for hearing in a pending proceeding in Docket No. ER06-456, *et al.* Linden states that the Commission's determination in that proceeding, regarding whether Transmission Enhancement Charges will be recovered from merchant transmission facilities and their customers, and how PJM will bill and who will collect such charges, will be binding on PJM, the PJM Transmission Providers, and transmission customers, including the Linden VFT Right Holders. Thus, Linden VFT contends, there is no need for the Commission to grant the clarification requested by the Linden VFT Right Holders.

¹⁰ An existing contract was filed as part of the February 14, 2007, "Report on Open Season" that was accepted by the Commission in *Linden VFT*, 119 FERC ¶ 61,066. Exhibit E contains the Firm Transmission Scheduling Rights Purchase Agreement between Linden VFT and the buyers.

¹¹ See, *PJM Interconnection, L.L.C.*, Docket Nos. ER07-632-000, ER07-632-001, ER07-632-002, and ER06-880, (May 3, 2007) (unpublished letter order).

14. On May 20, 2009, PJM filed its answer to the VFT Right Holders' request for clarification. PJM contends that its transmittal letter accompanying the tariff revisions accurately describes what happens when Transmission Enhancement Charges under schedule 12 of the PJM OATT are allocated to Linden VFT. PJM states that section 9 of schedule 16 makes clear that if these charges are billed to Linden VFT by PJM, Linden VFT "may bill" the Primary Rights Holders for such charges. PJM reiterates that schedule 16 is not intended to affect or modify any other provision of the PJM OATT or the PJM Amended and Restated Operating Agreement regarding Merchant Transmission Facilities, the allocation of costs for Regional Transmission Expansion Planning Protocol projects, or the parties' rights and obligations under schedule 12 of the PJM OATT. PJM also explains that any costs paid by a transmission customer should be paid to PJM on behalf of Linden VFT.

15. Nevertheless, PJM states Linden VFT is ultimately responsible for payment of Transmission Enhancement Charges to PJM pursuant to schedule 12 of the PJM OATT. PJM states that Linden VFT's ability to bill Transmission Enhancement Charges or any other charges under schedule 16 to the VFT Right Holders pursuant to its bilateral contracts is not addressed in schedule 16 or the transmittal letter. PJM states that it takes no position on that issue. PJM states a failure of any Linden VFT Transmission Customer or any Primary Rights Holder to pay the charges referenced in section 9 of schedule 16 is a failure by Linden VFT who is the party ultimately responsible for paying such charges.

IV. Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Linden VFT's and PJM's answers because they have provided information that assisted us in our decision-making process.

Commission Determination

18. The Commission finds that Linden VFT's proposed schedule 16 closely tracks and includes the similar "may bill" language approved by the Commission in schedule 14 of the PJM tariff which provides the terms and conditions for merchant transmission service for the Neptune Project. Section 9 of schedule 16 states that the Linden VFT Transmission Customer is responsible for any Service Administration Charge and the Primary Rights Holder is responsible for any Transmission Enhancement Charges and

Other Charges under schedule 16. Further, this section provides that if PJM bills the Linden VFT Transmission Owner for any of the charges under schedule 16, the Linden VFT Transmission Owner “may bill” either the Linden VFT Transmission Customer or the Primary Rights Holder these charges, and these parties shall pay PJM on behalf of the Linden VFT Transmission Owner.

19. We agree with PJM that schedule 16 does not affect or modify any other provision of the PJM OATT or the PJM Amended and Restated Operating Agreement regarding merchant transmission facilities, the allocation of costs for Regional Transmission Expansion Planning Protocol projects or the parties’ rights and obligations under schedule 12 of the PJM OATT. Schedule 16 simply addresses the mechanics under which a customer taking merchant transmission service over the Linden VFT facility will be billed for such service. We, therefore, clarify that Schedule 16 by itself does not establish cost responsibility. The issue of cost responsibility for Transmission Enhancement Charges for merchant transmission as provided under schedule 12 of the PJM OATT is currently pending before the Commission in a separate proceeding.¹² Ultimately, Linden VFT will be responsible for those charges allocated to it under the PJM OATT, as it is approved by the Commission.

20. The Commission is concerned about the reference in section 4.5 of schedule 16, Curtailment of Linden VFT Schedules, to the Joint Emergency Operating Protocol among PJM, Linden VFT, Linden Venture, Con Edison, and the NYISO. PJM states that this protocol will govern the curtailment of Linden VFT schedules, which must also be done in accordance with the PJM Tariff and NERC Reliability Standards. In its transmittal letter, PJM states that the protocol is presently under development and will be posted on the PJM website. However, section 4.5 of schedule 16 states that the Joint Emergency Operating Protocol for the Linden VFT scheduled line “is posted on the PJM website.” The Commission is unable to find this Joint Emergency Operating Protocol on PJM’s website and thus assumes that it is still under development. Accordingly, PJM is directed to file the Emergency Operating Protocol with the Commission and post it on the PJM website no later than 30 days before the in-service date of the Linden VFT facility.

The Commission orders:

(A) The Commission hereby conditionally accepts PJM’s revised tariff sheets to be effective June 15, 2009, as discussed in the body of this order.

¹² See Docket No. ER06-456, *et al.*

(B) PJM shall submit to the Commission and post to its website, the Joint Emergency Operating Protocol, referenced in Schedule 16, no later than 30 days before the in-service date of the Linden VFT facility.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.