

140 FERC ¶ 61,244  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 27, 2012

In Reply Refer To:  
Linden VFT, LLC  
Docket No. ER12-2239-000

SNR Denton US LLP  
1301 K Street NW  
Suite 600  
East Tower  
Washington, DC 20005

Attention: William D. Booth, Counsel for Linden VFT, LLC

Reference: Linden VFT Request for Limited Waiver

Dear Mr. Booth:

1. On July 13, 2012, Linden VFT, LLC (Linden VFT) filed, pursuant to Rule 207(a)(5) of the Commission's regulations,<sup>1</sup> a request for limited waiver of Schedule 16 of PJM Interconnection, LLC's (PJM) Open Access Transmission Tariff (Tariff) in support of the Transmission Scheduling Rights auction (2012 Auction) conducted as part of Linden VFT's 2012 open season process.<sup>2</sup> In this filing, Linden VFT states that it believes a partial waiver of Schedule 16 is required because the winning bid in the 2012 Auction is conditioned on Linden VFT not passing through to the successful bidder, PSEG Energy Resources & Trade LLC (PSEG), the Regional Transmission Expansion Plan and Reliability-Must-Run costs (RTEP/RMR Charges) that are allocated to Linden VFT's variable frequency transformer facilities (VFT Facilities)

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2012).

<sup>2</sup> This waiver filing was not made using the procedures for statutory filings established by the Commission. Electronic Tariff Filings, 130 FERC ¶ 61,047 (2010). The filing, therefore, is not a filing made pursuant to section 205 of the Federal Power Act, and will not go into effect without Commission action.

by PJM. As discussed below, the Commission grants the request for a limited waiver of PJM Tariff Schedule 16, to the extent necessary, to permit implementation of the 2012 Auction results.

2. Linden VFT's customers take service across the VFT Facilities, which creates additional transfer capability between PJM and the New York Independent System Operator, Inc. The VFT Facilities' capacity is governed by both the PJM Tariff and the Firm Transmission Scheduling Rights Purchase Agreements (TSR Agreements) between Linden VFT and its customers. PJM Tariff Schedule 16 provides the terms and conditions for transmission service over the VFT Facilities. Schedule 16 Section 9 states that Linden VFT "may bill" the Primary Rights Holders<sup>3</sup> for Transmission Enhancement Charges and any other charges related to the construction, maintenance, operation, or upgrading of the transmission system assessed to the VFT Facilities by PJM, and that the Primary Rights Holders "shall pay" them.

3. Linden VFT conducted the 2012 Auction to offer market participants an opportunity to acquire up to 225 MW of transmission capability over the VFT Facilities.<sup>4</sup> The 2012 Auction was conducted between April 5, 2012, and June 13, 2012, and all 225 MW of transmission scheduling rights were ultimately awarded, based on a single winning bid, to PSEG. Unlike in the auction in the prior open season process for the VFT Facilities in 2007, bidders in the 2012 Auction were provided the option to price their bids with or without assuming the obligation to pay RTEP/RMR Charges. PSEG's winning bid included this opt-out of responsibility for RTEP/RMR Charges.<sup>5</sup>

4. The 2012 open season was the second such process for the VFT Facilities. In 2007, Linden VFT conducted an open season in which four winning bidders, Consolidated Edison Energy, LLC (Con Edison), PSEG, Cargill Power Markets, LLC (Cargill), and Brookfield Energy Marketing, Inc. (Brookfield) (collectively, the Customers), obtained transmission scheduling rights for capacity over the VFT Facilities. The Commission accepted Linden VFT's 2007 open season report on April 19, 2007.<sup>6</sup>

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<sup>3</sup> PJM Tariff Schedule 16 Section 1.7 defines Primary Rights Holders as entities that have 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 owners.

<sup>4</sup> On July 13, 2012, Linden VFT filed with the Commission an Open Season Report in Docket No. ER07-543-002.

<sup>5</sup> Report on Open Season of Linden VFT, LLC, Docket No. ER07-543-002, July 13, 2012.

<sup>6</sup> *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007).

Linden VFT and the Customers subsequently disagreed as to whether Linden VFT may pass through to the Customers certain charges, including RTEP/RMR Charges. This disagreement resulted in a billing dispute. Linden VFT ultimately reached settlement agreements with Con Edison and PSEG to end their dispute. Linden VFT stated that it attempted to settle with Cargill and Brookfield but was unsuccessful.<sup>7</sup>

5. On March 30, 2012, Linden VFT filed the aforementioned settlement agreements with Con Edison and PSEG with the Commission and requested a limited waiver of PJM Tariff Schedule 16, to the extent necessary, to approve the settlements. On June 8, 2012, the Commission granted Linden VFT's request for limited waiver, to the extent necessary, to implement the settlement agreements.<sup>8</sup>

6. In the instant filing, Linden VFT requests that the Commission grant a limited waiver of PJM Tariff Schedule 16, to the extent necessary, to permit implementation of the 2012 Auction results. Linden VFT believes that partial waiver of Schedule 16 is required because the winning bid in the 2012 Auction is conditioned on Linden VFT not passing through to PSEG, the winning bidder, RTEP/RMR Charges assessed by PJM. Linden VFT states that it filed the limited waiver request with the Commission pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure.<sup>9</sup>

7. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 47,832 (2012), with interventions and protests due on or before August 3, 2012. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ¶ 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. A timely motion to intervene was filed by PJM on July 17, 2012. A motion to intervene, along with adverse comments, was filed by Cargill and Brookfield on August 3, 2012.

8. On August 7, 2012, Linden FT filed an answer to the adverse comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), 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.

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<sup>7</sup> Linden VFT Transmittal Letter, Docket No. ER12-1419-000, March 30, 2012, at page 3.

<sup>8</sup> *Linden VFT, LLC*, 139 FERC ¶ 61,192 (2012).

<sup>9</sup> 18 C.F.R. § 385.207(a)(5) (2012).

9. In their filing, Cargill and Brookfield request that the Commission deny Linden VFT's request for a limited waiver of PJM Tariff Schedule 16. They state that the terms and conditions of the TSR Agreement between Linden VFT and its transmission customers, rather than PJM's Tariff, govern the charges Linden VFT may impose on those 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 transmission customers in contravention of the parties' contractual arrangements, no waiver of PJM's Tariff is necessary to implement the results of the 2012 Auction.<sup>10</sup>

10. On August 7, 2012, Linden VFT filed an answer to Cargill and Brookfield arguing that Cargill and Brookfield have not demonstrated how granting the requested waiver would cause them harm. Specifically, Linden VFT asserts that the waiver request does not apply to Cargill and Brookfield and it does not shift any costs to them or any other customers.

11. The Commission will grant Linden VFT's request for limited waiver of PJM Tariff Schedule 16, to the extent necessary, to permit implementation of the 2012 Auction results. 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>11</sup> As stated by Linden VFT, granting the limited waiver of PJM Tariff Schedule 16, to the extent necessary, will assist in the implementation of its 2012 Auction results. Moreover, Linden VFT's limited waiver request applies only to the new TSR Agreement between these two parties and, therefore, will not harm Cargill, Brookfield, or any other third party. Finally, granting Linden VFT's waiver request, to the extent necessary, in this

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<sup>10</sup> Cargill and Brookfield Motion to Intervene and Comments, at page 7.

<sup>11</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).

proceeding is not meant to impact any other matter between Linden VFT and its customers under other TSR Agreements.<sup>12</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>12</sup> Because granting this limited waiver, to the extent necessary, is not meant to impact any other matter between Linden VFT and its customers, the Commission is not persuaded by Cargill and Brookfield's arguments for denial of Linden VFT's request limited waiver.