

142 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Linden VFT, LLC

Docket No. EL13-40-000

v.

Brookfield Energy Marketing, LP
and Cargill Power Marketing, LLC

ORDER RESPONDING TO COURT

(Issued March 12, 2013)

1. On January 16, 2013, Linden VFT, LLC filed a “Complaint or in the Alternative Petition for Declaratory Order” (Petition)¹ with the Commission, seeking an order from the Commission finding that that Brookfield Marketing, LP (Brookfield) and Cargill Power Markets, LLC (Cargill) (collectively, TSR Customers) are required to: (1) reimburse Linden VFT in full with interest for past invoices for transmission service across Linden VFT’s transmission facility that include costs billed by PJM Interconnection, LLC associated with such service; and (2) pay Linden VFT in full for all future invoices for the duration of their Transmission Scheduling Rights Purchase (TSR) Agreements.

2. Linden VFT filed the above Petition with the Commission subsequent to the TSR Customers’ filing an action for declaratory judgment on November 14, 2012 in the United States District Court for the Southern District of New York (District Court). The civil action seeks a determination from the District Court that the TSR Customers are not obligated to pay the costs at issue under their TSR Agreements. In response to the TSR Customers’ District Court action, Linden VFT filed a motion to dismiss with the District Court arguing, among other things, that these matters are more properly addressed by the Commission.

¹ The Petition was filed pursuant to sections 26 and 306 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e (2006), respectively, and Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2012).

3. On February 27, 2013, Linden and the TSR Customers filed with the Commission an order from the District Court stating that the “Court would benefit from an early decision by FERC concerning the matters before it in the FERC Proceeding” and directing that “Plaintiffs and Linden shall promptly provide the Court with a copy of any response to this Order that they may receive from FERC.” On March 1, 2013, Linden VFT, LLC filed with the Commission a second order from the District Court that stayed Linden VFT’s motion to dismiss filed in the District Court action pending the Commission’s determination whether it will consider Linden VFT’s Petition. The District Court also stated that, “[t]he Court is interested in being notified promptly by the parties as to whether FERC will address Linden’s FERC complaint. FERC is therefore respectfully requested to inform the parties as soon as it decides whether it will do so.”

4. As requested by the District Court, the Commission hereby notifies the parties that it will address the merits of Linden VFT’s Petition. The Commission directs Linden VFT to so notify the District Court of this decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.