

141 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Linden VFT, LLC

v.

Docket No. EL12-64-000

New York Independent System Operator, Inc.

ORDER ON COMPLAINT

(Issued October 1, 2012)

1. On May 4, 2012, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Linden VFT, LLC (Linden VFT) filed a complaint against the New York Independent System Operator, Inc. (NYISO). Linden VFT alleges that NYISO unduly discriminated against it because NYISO failed to adjust Linden VFT's Capacity Resource Interconnection Service (CRIS) value to match its actual capacity. Linden VFT requests that the Commission require NYISO to accept the performance tests that established that Linden VFT's Dependable Maximum Net Capability (DMNC) is 15 megawatts (15 MW Incremental Capacity) greater than was initially awarded, without requiring Linden VFT to make a new interconnection request for the additional CRIS value. As discussed below, we grant Linden VFT's complaint and direct NYISO to increase Linden VFT's CRIS value by the 15 MW Incremental Capacity.

Background

2. Linden VFT, a wholly-owned subsidiary of General Electric Capital Corporation, owns and operates a Variable Frequency Transformer (VFT) merchant-transmission line

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. § 385.206 (2012).

(Project) that interconnects NYISO with the neighboring Regional Transmission Operator (RTO), PJM Interconnection, LLC. Linden VFT states that its Project is the only merchant transmission line in New York without a long-term anchor customer that has retail load obligations. NYISO is the not-for-profit ISO that controls operation of the transmission system for the state of New York. NYISO provides open access transmission service, maintains reliability, and administers the wholesale energy market and capacity market for New York, pursuant to its Open Access Transmission Tariff (OATT or Tariff) on file with the Commission.

3. Linden VFT states that it first submitted its interconnection request on July 10, 2002. Linden states that in 2002, no Variable Frequency Transmission (VFT) facilities had ever been constructed and placed into commercial service. Linden VFT's interconnection request also predated the Commission's rulemaking orders³ that standardized generator interconnection agreements and required a second level of service in addition to Energy Resource Interconnection Service that incorporates a deliverability⁴ requirement.

4. NYISO and its members submitted a "Consensus Deliverability Plan" on October 5, 2007, which included the proposed CRIS incorporating a deliverability requirement. In its *Guidance Order*,⁵ the Commission approved, in principle, the conceptual framework proposed in the Plan, including a proposed CRIS incorporating a deliverability requirement, provided further guidance to NYISO and its members to facilitate the development of further revisions to the OATT, and directed NYISO to file tariff revisions. In the *Guidance Order*,⁶ the Commission grandfathered all pre-Class Year 2007 projects from the CRIS deliverability requirement, expressly including

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (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), *cert. denied*, 552 U.S. 1230 (2008).

⁴ "In the Consensus Deliverability Plan, NYISO defined deliverability broadly as the ability to deliver the aggregate of New York control area capacity to the aggregate of the New York control area load under summer peak load conditions." *New York Indep. System Operator, Inc.*, 126 FERC ¶ 61,046, at n.11 (2009).

⁵ *New York Indep. System Operator, Inc., et al.*, 122 FERC ¶ 61,267 (2008) (*Guidance Order*).

⁶ *Guidance Order*, 122 FERC ¶ 61,267 at PP 63 and 65.

Linden VFT in the grandfathered projects as it was part of the Class Year 2006 Interconnection Facilities Study.⁷ Later, in an order on compliance issued January 15, 2009,⁸ the Commission accepted, effective October 5, 2008, NYISO's tariff revisions reforming its interconnection queue procedures, which among other changes included the new CRIS. Since then, in order to participate in the capacity market, a generator – or a merchant transmission facility requesting Unforced Capacity Delivery Rights (UDRs)⁹ – must first establish a precise CRIS value, expressed in MW. With the exception of the grandfathered projects that do not have to comply with the deliverability requirement, CRIS rights allow a generator to participate in NYISO's capacity market only to the extent of the generator's deliverability.

Complaint

5. Linden VFT argues that NYISO is applying its tariff to Linden VFT in a manner that contradicts the actual tariff language and is also unduly discriminatory. In particular, Linden VFT argues that the Commission should require NYISO to recognize the Project's actual tested capacity of 315 MW based on its Dependable Maximum Net Capability (DMNC) testing, in the manner Linden VFT claims NYISO has done for similarly situated grandfathered generators, rather than the 300 MW capacity established before the Project had been constructed.

6. Linden VFT states that on October 15, 2009, two weeks before entering commercial operation on November 1, it conducted performance tests in a manner identical to which generators' DMNC values are established, and established a DMNC value of 315 MW.¹⁰ Linden VFT notes that this represents an increase of 15 MW, or 5 percent, over the nominal capacity in its 2002 Interconnection Request. Linden VFT

⁷ An interconnection facilities study specifies and estimates the cost of the equipment, engineering and design work, permitting, site acquisition, procurement and construction work and commissioning needed to interconnect a transmission customer's facilities and related system upgrade facilities, including large facilities seeking CRIS. NYISO Open Access Transmission Tariff (OATT), Attachment X, § 30.8.

⁸ *New York Indep. System Operator, Inc., et al.*, 126 FERC ¶ 61,046 (2009) (January 15, 2009 Order).

⁹ UDRs are rights that let a controllable line be treated as if it were located within the locality into which it delivers. UDRs, like CRIS levels, are measured in MW. NYISO, NYISO Tariffs, MST, § 2.21 (0.0.0) (defining "Unforced Capacity Deliverability Rights").

¹⁰ Linden VFT Complaint at 14.

explains that, at the time, VFT was a new technology with little history of field operation, so a significant deviation from nameplate capacity should not have been a surprise, and indeed was fully consistent with the detailed technical data and power flow studies that Linden VFT supplied NYISO.¹¹

7. Linden VFT asserts that, prior to the 2008 tariff revisions, NYISO's Operating Committee had a written practice of not requiring a new interconnection request when a new project proved to have a capacity increase that was not materially adverse to reliability.¹² Linden VFT also points out that NYISO has applied these "material adverse difference" criteria very liberally in the past¹³ by granting capacity increases to generators without requiring new interconnection studies.¹⁴ Linden VFT adds that it cited to this policy in its 2002 interconnection request. Linden VFT states that in June 2008, NYISO granted Linden VFT 300 MW of UDRs, effective upon commercial operation.¹⁵ Given its past practice, Linden VFT argues that NYISO should have approved its request for an additional 15 MW request summarily. On November 13, 2009, however, Linden VFT states that it formally requested that NYISO award it the 15 MW Incremental Capacity¹⁶ NYISO denied the request and directed Linden VFT to submit a new interconnection request for the 15 MW Incremental Capacity.¹⁷ Linden VFT states that it did so on February 26, 2010, but reserved the right to seek relief with the Commission.¹⁸ It states that the parties engaged in informal settlement discussions in an attempt to resolve their dispute.

8. Linden VFT notes that the *Guidance Order* "accepted NYISO's 'Deliverability Plan' while explicitly determining that the new deliverability requirement would *not*

¹¹ *E.g.*, Linden VFT Complaint, Ex. 15 at § 5.8 (stating that the Project had a 330 megavolt ampere rating, and would be tested for power transfers exceeding 300 MW).

¹² Linden VFT Complaint, Ex. 5.

¹³ Linden VFT Complaint at 6.

¹⁴ *Id.* at 29, 30.

¹⁵ Linden VFT Complaint, Ex. 13.

¹⁶ Linden VFT Complaint, Ex. 16.

¹⁷ Linden VFT Complaint, Ex. 17.

¹⁸ Linden VFT Complaint at 11 & n.38.

apply to any pre-Class Year 2007 projects. Linden was specifically identified as one of the grandfathered projects.”¹⁹ Linden VFT emphasizes that generators that were grandfathered have been allowed to increase their DMNC in the manner that Linden VFT requests, *i.e.*, by being tested over a five-year period, with the highest operational capability becoming its DMNC.

9. Linden VFT argues that it is unduly discriminatory for NYISO not to afford it the same benefit afforded to other grandfathered facilities just because those facilities are generators and it is not. Linden VFT argues that otherwise NYISO has consistently treated it as a generator whenever relevant under the interconnection procedures. For example, Linden VFT cites NYISO’s Filing to comply with the *Guidance Order*,²⁰ in which NYISO stated:

The NYISO’s interconnection procedures accommodate merchant transmission projects as well as generation projects. As used herein, the term “Generator” includes a proposed new Generator, an increase in the capacity of an existing Generator, and a new controllable transmission facility seeking Unforced Capacity Deliverability Rights.

Linden VFT notes that, in response, it filed comments supporting NYISO’s Filing “to the extent it accurately and appropriately implements the Commission’s directive that the new deliverability requirements shall not apply to pre-Class Year 2007 projects, including Linden.”²¹

10. Linden VFT also cites the NYISO Tariff, which states that grandfathered projects such as the Linden VFT Project may use their maximum proven DNMC level, “even if that DMNC value exceeds nameplate MWs.”²² Therefore, Linden VFT argues, NYISO cannot claim that the Tariff prevents it from granting Linden VFT relief, because the Tariff language was clearly intended to preclude nameplate capacity from being a cap on all pre-existing projects. Linden VFT notes that NYISO has relied on a *MISO* decision to argue that an ISO cannot allow any increase in capacity without an interconnection request, but Linden VFT argues that *MISO* is inapposite, because it involved a physical

¹⁹ *Id.* at 9 (citing *Guidance Order*, 122 FERC ¶ 61,267 at PP 1, 65).

²⁰ *Id.* at 13 (quoting NYISO Compliance Filing for the Deliverability Plan, Docket No. ER04-449-017 at n.16 (filed August 5, 2008)).

²¹ *Id.* at 13 (quoting Linden VFT Comments and Conditional Protest, Docket No. ER04-449-017, at 1-2 (filed August 26, 2008)).

²² *Id.* at 18 (quoting NYISO OATT, Attachment S, § 25.9.3.1).

modification to an existing plant, and did not involve NYISO's unique grandfathering tariff provisions.²³

11. As a policy matter, Linden VFT further argues that NYISO must honor the grandfathering commitments it made, rather than frustrating the reasonable expectations of interconnection customers by attempting to change the rules retroactively in mid-process. Linden VFT notes that NYISO has cited an October 5, 2004 tariff change to the definition of "Interconnection Request"²⁴ as blocking Linden VFT's claim to the 15 MW Incremental Capacity by requiring a new interconnection request for any increase in capacity, but argues this is irrelevant. On this specific matter, Linden VFT argues that NYISO's current interpretation contradicts the interpretation that NYISO publicly espoused in November 2004, shortly after the change became effective, in which NYISO explained that "the new rule [] would be applied only to new queue entrants."²⁵ Linden VFT further argues that this contradicts orders in which the Commission has judged the parties' obligations by using the tariff on file (in this case, 2002) when the interconnection was being considered, since in order for the queue to operate fairly, parties need to know what rules will control so that they can plan accordingly.²⁶

12. Linden VFT further argues that NYISO's purported application of the CRIS tariff procedures is discriminatory, because no rational basis exists for establishing CRIS values differently for generation versus controllable transmission resources. Linden VFT notes that the OATT fails to make a distinction in how to determine the DMNC, and that the NYISO Installed Capacity (ICAP) Manual lacks a detailed test regime for merchant transmission.²⁷ Linden VFT claims that it resolved these omissions by testing the Project under technical standards that were at least as rigorous as the DMNC test for a generation plant, and informed NYISO of the details of its test parameters four months before performing the test. Linden VFT argues that NYISO itself originally agreed to study the

²³ *Id.* at 19 (citing *Midwest Indep. Transmission System Operator, Inc.*, 125 FERC ¶ 61,210 (2008) (*MISO*)).

²⁴ NYISO OATT at Attachment X, § 30.1.

²⁵ Linden VFT Complaint at 21 (citing Linden VFT Ex. 19 at 3).

²⁶ *Id.* at 22 (citing *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,195 (2011)).

²⁷ *Id.* at 24.

Project as if it were a generator on January 22, 2004,²⁸ and has never suggested that the Project as constructed differs from the proposal that NYISO studied.

13. Finally, Linden VFT argues that there is no dispute regarding technical questions or reliability; rather, its dispute with NYISO is entirely over process. Linden VFT claims that NYISO has not only failed to apply a “no increase” rule to generators, but that it has also approved increases for several generators that were larger than Linden VFT’s request. For example, after NYISO informed Linden VFT in late 2009 that it was applying a strict “no increase” rule, Linden VFT claims that NYISO approved several increases due to some change in the projects’ equipment, including a 66.4 MW, or a 21 percent, increase for the Caithness Long Island Energy Center.²⁹ Linden VFT further argues that it has conclusively demonstrated to NYISO that its proposed 15 MW Incremental Capacity would have no adverse impact on the transmission system.

14. Accordingly, Linden VFT argues that NYISO has unduly discriminated against its Project. Linden VFT urges the Commission to “use its remedial discretion to restore Linden VFT to the same position it would be in if NYISO had not discriminated against it.”³⁰ In particular, Linden VFT seeks a finding of undue discrimination and a directive that NYISO recognize the CRIS value of the Project as 315 MW and award the Project an additional 15 MW of UDRs, effective on the date that the order is issued. Linden VFT states that it is not seeking financial recompense for past damages, but wants the Commission to be aware that Linden VFT has lost several million dollars in opportunity costs for not being able to bid its full capacity into NYISO’s markets, as well as the extra interconnection facilities study costs, consultant and legal fees, and employee time as a result of this dispute.

Notice of Filing and Responsive Pleadings

15. Notice of Linden VFT’s complaint was published in the *Federal Register*, 77 Fed. Reg. 28,374 (2012), with interventions or protests due on or before May 24, 2012. The

²⁸ Linden VFT Complaint at 10-11 (citing Linden VFT Ex. 1, Marczewski Aff. at 8, Ex. 12).

²⁹ Linden VFT Complaint at 29-30, Ex. 11 & 19, and Ex. 1, Marczewski Aff. at 22-23.

³⁰ Linden VFT Complaint at 32 (citing *Consolidated Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1540-51 (D.C. Cir. 1985)).

New York Transmission Owners (NYTOs) intervened and protested.³¹ NYISO and Con Edison each filed an answer to the complaint. On June 4, 2012, Linden VFT filed an answer to NYISO's answer. Brookfield Energy Marketing LP, Hess Corporation, Hudson Transmission Partners, LLC, PSEG Companies,³² and TC Ravenswood, LLC submitted motions to intervene.

NYISO Answer

16. In its answer, NYISO argues that its determination against Linden VFT was consistent with its Tariff and Commission precedent. NYISO acknowledges that in the *Guidance Order*, the Commission stated that Linden VFT would be grandfathered from the deliverability requirement.³³ NYISO argues, however, that in the order on compliance, the Commission accepted language in section 25.9.3.1 of the Tariff providing that “the CRIS capacity level for controllable lines pre-dating Class Year 2007 will be set at the MWs of Unforced Deliverability Rights awarded to them.”³⁴ NYISO also argues it is clear that the CRIS capacity level for a grandfathered generator “was to be set quite differently” from grandfathered controllable lines “by using the generator’s highest Dependable Maximum Net Capability (“DMNC”) value achieved over a five-year time period, or by using the generator’s nameplate MW rating, when the generator had not yet established a DMNC value.”³⁵ Accordingly, NYISO argues, only the first 300 MW of Linden VFT’s Project are grandfathered, not the 15 MW Incremental Capacity.

17. NYISO further argues that the Linden VFT Project was grandfathered from some matters, but not from the Large Facility Interconnection Procedures (Interconnection

³¹ The New York Transmission Owners (NYTOs) consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (Con Edison), Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. Con Edison also filed its own answer supporting NYISO’s position.

³² Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

³³ NYISO Answer at 4 (citing *Guidance Order*, 122 FERC ¶ 61,267 at PP 63-67).

³⁴ *Id.* at 4 (citing *New York Indep. System Operator, Inc.*, 126 FERC ¶ 61,046 at P 105 and NYISO OATT Attachment S § 25.9.3.1.)

³⁵ *Id.* at 7-8.

Procedures), which took effect in August 2004 while Linden VFT's interconnection request was still pending. NYISO states that the Interconnection Procedures address the transition of pending projects, and clearly provide that projects like Linden VFT's that had not yet executed a interconnection facilities study agreement would fall under the new rules.

18. NYISO also argues that "Commission precedent requires the submission of [a] new Interconnection Request for any increase in the capacity of an existing facility."³⁶ NYISO argues that, once a facility has completed its interconnection studies, it is an existing facility, even if it is not yet fully constructed or interconnected.³⁷ NYISO claims that the Commission has consistently applied this rule to MISO, even where, as here, the increase is due to changes in how capacity was estimated.³⁸

19. NYISO argues that the proper issue in this proceeding is not whether the Project has physically changed, but whether the facilities' characteristics have changed from how they were described in the original interconnection proposal.³⁹ NYISO argues that Linden VFT submitted an interconnection facilities study request application for a 300 MW facility on July 10, 2002, and consistently described its facility as 300 MW in subsequent proceedings, and that Linden VFT should be held to its numerous prior representations.

20. NYISO argues that its existing procedures are already addressing the dispute. NYISO states that it completed a System Reliability Impact Study (SRIS) for the 15 MW Incremental Capacity and signed a Facilities Study Agreement with Linden VFT following Linden VFT's new February 26, 2010 interconnection facilities study request. NYISO states that it is currently studying the 15 MW as part of the Class Year 2011 Interconnection Facilities Study.

21. Further, NYISO argues that the distinction between generators and controllable lines is not discriminatory, but rather based on characteristic features of the different NYISO capacity market rules that already apply to controllable lines and generators. NYISO explains that UDRs are rights that let a controllable line be treated as if it were located within the locality into which it delivers. DMNC values, by contrast, measure the capacity that a generator already in a given locality can bring to the New York Capacity

³⁶ *Id.* at 13.

³⁷ *Id.* at 13-14 (citing *MISO*, 125 FERC ¶ 61,210 at P 15).

³⁸ *Id.* at 15 (citing *MISO*, 125 FERC ¶ 61,210 at PP 7, 12-16).

³⁹ *Id.* at 15.

Markets.⁴⁰ NYISO argues that, since controllable lines and generators operate differently, it is reasonable that the Tariff treats them differently. NYISO claims that Linden VFT's complaint is essentially a collateral attack on the Commission order accepting the tariff language creating this distinction.

22. Finally, NYISO argues that Linden VFT's claim of undue discrimination must fail because the four examples that Linden VFT provides of projects that had their CRIS adjusted were all projects that either had not completed their interconnection studies or had not signed an "effective" interconnection agreement.⁴¹ For example, NYISO argues that its decision to increase the capacity of the Caithness Long Island project is distinguishable because of the specific facts of that project, which involved a temperature-sensitive generation unit. When the Caithness Long Island project first entered the interconnection process, NYISO states, it did not request a winter capability. Accordingly, NYISO claims, Linden VFT is not similarly situated to generators.

NYTOs Protest

23. The NYTOs support NYISO and argue that Linden VFT fails to demonstrate undue discrimination. The NYTOs argue that being "grandfathered" only refers to the requirement to pay for transmission upgrades, and should not be expanded without a showing that reliability is not affected. The NYTOs note that Linden VFT argues that its 15 MW Incremental Capacity has no reliability impact and also argues that it should not be required to file an interconnection request. The NYTOs argue that these two positions are inconsistent, because filing an interconnection request will allow Linden VFT to be awarded its 15 MW Incremental Capacity. They argue that otherwise Linden VFT would violate the principle that a facility grandfathered against the deliverability requirement should not be allowed to increase its capacity without demonstrating deliverability. Finally, the NYTOs claim that "the tariff [] provides for distinctly different treatment for generators and controllable lines."⁴² Accordingly, they argue that the complaint should be summarily rejected.

Con Edison Answer

24. In its answer, Con Edison states that it supports the NYTOs and NYISO, but wishes to further dispute two assertions in Linden VFT's complaint. First, it disputes Linden VFT's claim that Con Edison, as the interconnecting transmission owner, singled

⁴⁰ *Id.* at 8-9.

⁴¹ *Id.* at 23.

⁴² NYTOs Protest at 4.

Linden VFT out for disparate treatment. Con Edison notes that Linden VFT provides no factual basis for this claim. Con Edison argues that it has been consistent in expressing reliability concerns about any interconnecting facilities when applicable, and that it has otherwise materially supported Linden VFT's project and sought to coordinate with Linden VFT. Second, Con Edison disputes Linden VFT's claim that the Commission should focus on Linden VFT's opportunity cost because of its inability to sell the 15 MW Incremental Capacity. Con Edison argues that it is more relevant that Linden VFT has been allowed to sell its original 300 MW, even though Linden VFT has not finished the system upgrade facilities that its Project requires.⁴³

Discussion

Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴⁵ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Linden VFT's answer and will, therefore, reject it.

Substantive Matters

26. We grant Linden VFT's complaint based on our finding, as discussed below, that NYISO has applied its Tariff incorrectly. The CRIS, measured in MW, establishes the maximum interconnection service level for each resource that participates in the NYISO capacity markets. As described below, NYISO's Tariff obligated it to set Linden VFT's CRIS level initially at its Unforced Capacity Deliverability Rights (UDRs) level of 300 MW, the level that was specified in the interconnection agreements. However, we find that the Tariff also obligated NYISO to reset the CRIS level to 315 MW as soon as Linden VFT demonstrated a successful DMNC test at that level. Moreover, as relevant here, we find that, once the first CRIS capacity value is established, the Tariff makes no distinction between generators and controllable merchant transmission projects as to adjustments to those values.

⁴³ Con Edison Answer at 2-3.

⁴⁴ 18 C.F.R. § 385.214 (2012).

⁴⁵ 18 C.F.R. § 385.213(a)(2) (2012).

27. All parties agree that the *Guidance Order* clarified that all projects from the 2006 Class Year and earlier would be grandfathered in the same manner; indeed, the *Guidance Order* specifically named Linden VFT as grandfathered.⁴⁶ Further, as discussed below, the *Guidance Order* made clear that the required procedures applied to both generators and controllable merchant transmission projects and that the Commission's references to generators or interconnection customers in that order were intended to include controllable merchant transmission projects.⁴⁷ For these reasons, we do not agree that Linden VFT's complaint is a collateral attack on the *Guidance Order*; additionally, the *Guidance Order* acknowledged that pre-Class Year 2007 interconnection customers, including Linden VFT, had already posted required security, and rejected the application of differing deliverability requirements on Linden VFT.⁴⁸

28. The parties disagree, however, as to how the Tariff language implementing grandfathering should be applied to a merchant transmission project such as Linden VFT, and in particular how the CRIS level for such project should be set. That is, NYISO and Linden VFT agree that the present dispute is essentially over process and tariff interpretation, rather than being over, for example, the technical matter of what Linden VFT's actual capacity is.⁴⁹ With respect to the instant complaint, we find that OATT Attachment S section 25.9.3.1 distinguishes between the capacity levels for controllable lines and generators pre-dating Class Year 2007, consistent with NYISO's promise to grandfather pre-2007 Class Year facilities. This section states:

For generators pre-dating Class Year 2007, the CRIS capacity level will be set at the maximum DMNC level achieved during the five most recent Summer Capability Periods prior to October 5, 2008, even if that DMNC value exceeds nameplate MWs.

For a generator pre-dating Class Year 2007 and not having DMNC levels recorded for five Summer Capability Periods prior to October 5, 2008, its CRIS capacity level will be set, and reset if necessary, at the maximum DMNC level achieved during successive Summer Capability Periods until

⁴⁶ *Guidance Order*, 122 FERC ¶ 61,267 at PP 65-66.

⁴⁷ *Id.* n.8 (“The proposed interconnection procedures pertain not only to generators but also to controllable merchant projects. As such, in referring to interconnection customers or generators referred to in this order, the Commission intends to include all applicable projects and customers.”).

⁴⁸ *Id.* P 65.

⁴⁹ See NYISO Answer at 15 & 18, Linden VFT Complaint at 28.

it has DMNC levels recorded for five Summer Capability Periods. Prior to the establishment of the generator's first DMNC value for a Summer Capability Period, the generator's CRIS level will be set at nameplate MW. The CRIS capacity level for intermittent resources pre-dating Class Year 2007 will be set at nameplate MW, and **the CRIS capacity level for controllable lines pre-dating Class Year 2007 will be set at the MW of Unforced Capacity Deliverability Rights awarded to them.**⁵⁰

29. Section 25.9.3.1 of the OATT addresses how UDRs are awarded and adjusted for pre-Class Year 2007 generators. However, it is not as specific when describing the process for pre-Class Year 2007 controllable lines. It is evident from its language how CRIS is initially awarded to these generators and controllable lines.⁵¹ It also is clear that CRIS capacity initially awarded to these generators may be adjusted. The section is then silent as to how capacity would be adjusted for these controllable lines. NYISO now contends that this silence is to be interpreted as a lack of ability of a controllable merchant line to obtain an adjustment of its capacity award in the absence of a new interconnection request. The Commission disagrees. We find that, in the *Guidance Order*, the Commission made clear that controllable transmission and generators are to be treated in the same manner in the CRIS process and that pre-2007 Class Year generators and Linden VFT were to be grandfathered together.⁵² That is, as noted earlier, the Commission stated that the Commission's references to generators or interconnection customers in that order were intended to include controllable merchant transmission projects. While the OATT distinguishes generators and controllable lines in how capacity is initially awarded, it does not do so with respect to how to adjust capacity *after the first capacity value is established*. In sum, we find that the Commission's Guidance Order required NYISO to treat the two similarly in the CRIS process as to adjustments to initially-awarded capacity values. The absence of explicit Tariff language regarding adjustments to CRIS capacity awarded to pre-Class Year 2007 controllable merchant transmission projects allows us to look to other sources, i.e., to extrinsic evidence, to corroborate that it was intended that an initial award of UDRs could later be adjusted for such a controllable line without it having to file another interconnection request.

⁵⁰ NYISO OATT, 25.9 OATT Att. S Going Forward, 0.0.0, § 25.9.3.1 (emphasis added).

⁵¹ Like generators pre-dating Class year 2007, Linden VFT's initial award of capacity was based on the manufacturer's "name plate" capacity.

⁵² Note 47 *supra*.

30. Linden VFT's Project is the only grandfathered⁵³ pre-Class Year 2007 synchronous controllable AC line on the NYISO system. However, in the proceedings that established section 25.9.3.1, *i.e.*, the proceedings that led to the *Guidance Order* and to the January 15, 2009 Order, NYISO proposed to treat the Linden VFT Project as being part of the larger class of all pre-2007 "Generators." In NYISO's own words, NYISO described its proposal as follows:

The NYISO's interconnection procedures accommodate merchant transmission projects as well as generation projects. As used herein, the term 'Generator' includes a proposed new Generator, an increase in the capacity of an existing Generator, **and a new controllable transmission facility seeking Unforced Capacity Deliverability Rights.**⁵⁴

Linden's status was squarely before NYISO and the Commission in that proceeding; the *Guidance Order* ruled not only on NYISO's proposal but also on Linden VFT's status in a cost allocation dispute between Linden VFT and Con Edison.⁵⁵ Consistent with its treatment of generators and controllable transmission facilities prior to implementation of the new CRIS provisions, NYISO proposed to treat controllable transmission in the same manner as a generator, and the Commission, in the *Guidance Order*, approved that proposal. As noted above, the Commission clarified that, like NYISO, its references to "generators" and "interconnection customers" were meant to include controllable merchant transmission projects like Linden VFT's Project.

⁵³ Even though NYISO argues that Linden VFT is not grandfathered from the Interconnection Procedures, Linden VFT points to materials presented in the NYISO stakeholder process that the new tariffs for implementation of the Interconnection Procedures (effective on October 5, 2004), which permitted "no increase," would only be applied "once the transition of pre-existing projects in the queue has been completed." This evidence justifies our finding that Linden VFT was also grandfathered from the Interconnection Procedures. Linden VFT Complaint, Ex. 19 at 3 (including a presentation by NYISO at the November 9, 2004 Transmission Planning Advisory Subcommittee meeting).

⁵⁴ Consensus Deliverability Plan of the New York Independent System Operator, Inc., and the New York Transmission Owners, Docket ER04-449-016, n.21 (filed October 5, 2007) (emphasis added). *See* also identical language in Joint Compliance Filing of the New York Independent System Operator, Inc. and the New York Transmission Owners on Consensus Deliverability Plan, Docket No. ER04-449-017, n.16 (filed August 5, 2008).

⁵⁵ *Guidance Order*, 122 FERC ¶ 61,267 at PP 53, 65, 66.

31. NYISO's ICAP Manual supports Linden VFT's complaint, offering additional corroborating evidence that section 25.9.3.1 was intended to allow for adjustments to the CRIS values of grandfathered controllable lines.⁵⁶ ICAP Manual section 4.14 provides details of how UDRs are assigned, adjusted, and used. Section 4.14.1 declares, "The amount of UDRs assigned by the NYISO to each new incremental transmission facility, and any future adjustments there to, will be based on the transmission capability, reliability, availability of the facility, and appropriate NYSRC reliability studies." It then declares that projects from Class Year 2007 or later "must meet the NYISO Deliverability Interconnection Standard," but not "Projects predating Class Year 2007 that hold UDRs received CRIS pursuant to the NYISO OATT Attachment S." This section is noteworthy for two reasons. First, the ICAP Manual anticipates that interconnection projects may have their UDRs adjusted to reflect the actual DNMC value of the project. Second, the ICAP Manual grandfathers all pre-2007 "Projects," a term that includes Linden VFT's Project, from having to prove that their adjustments meet the new Deliverability Interconnection Standard, and thus avoids the need for new interconnection facilities studies. All grandfathered projects thus have the right to adjust their awarded CRIS value to reflect actual DNMC values. In this regard, as Linden VFT documents, NYISO has increased the awarded capacity levels of several generators based on updated DNMC testing results, some of them even after NYISO asserted to Linden VFT that it lacked the power to do so for it. The most telling example is the Caithness Long Island project which, although Caithness did not request a winter capability value when it first entered the queue, was nevertheless granted a requested increase to its maximum winter capability rating (to 375.7 MW) without having to file a new interconnection request after NYISO agreed to analyze the project for its winter capability.⁵⁷

32. In sum, Linden VFT is entitled to prevail here. The Linden VFT Project achieved commercial operation on November 1, 2009, at which time its CRIS capacity level was set at the nameplate capacity of 300 MW, *i.e.*, at the manufacturer's projected capacity for this particular technology, before testing was performed to establish what its actual capacity is. On October 15, 2009, the Linden VFT Project demonstrated its transmission capability of 315 MW through performance tests equivalent to those used to establish the DNMC of generators. Under the Tariff, once the DNMC value is established, there is no distinction between grandfathered Generators and controllable lines as to adjustments to

⁵⁶ While an ISO's tariff always controls its manuals and not *vice versa*, reference to manuals can occasionally be useful to elucidate the intent underlying ambiguous tariff provisions.

⁵⁷ See NYISO Answer at 24-25; Linden VFT Complaint at 29-30, and Ex. 1, Marczewski Aff. at 22.

the CRIS capacity level to reflect actual demonstrated capacity. Further, NYISO has not claimed that Linden VFT's testing was in any way technically deficient. Accordingly, we find that NYISO incorrectly applied its Tariff and should have awarded Linden VFT a revised CRIS value of 315 MW, just as NYISO awarded incremental increases in CRIS value to grandfathered generators based on their performance tests. We therefore grant the complaint and direct NYISO to adjust Linden VFT's CRIS value to 315 MW.

The Commission orders:

(A) Linden VFT's complaint is hereby granted, as discussed in the body of this order.

(B) NYISO is hereby directed to adjust Linden VFT's CRIS value to 315 MW, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.