

143 FERC ¶ 61,031  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 9, 2013

In Reply Refer To:  
Linden VFT, LLC  
Docket No. ER13-1051-000

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

Dear Mr. Booth:

1. On March 6, 2013, Linden VFT, LLC (Linden VFT) filed, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> a request for limited waiver of Schedule 16 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) in support of the Transmission Scheduling Rights Auction (2013 TSR Auction) of 15 MW to be conducted in April 2013 as part of Linden VFT's 2013 Open Season.<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 2013 Auction may be conditioned on Linden VFT not passing through to the successful bidder the Regional Transmission Expansion Plan and Reliability-Must-Run costs (RTEP/RMR Charges) that are allocated to Linden VFT's variable frequency transformer facility (VFT Facility) by PJM. As discussed below, the Commission grants Linden VFT's request for a limited waiver of PJM Tariff Schedule 16, to the extent necessary, effective April 1, 2013.

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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.

2. Linden VFT's customers take service across the VFT Facility, which creates additional transfer capability between PJM and the New York Independent System Operator, Inc. The VFT Facility's 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, 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 (RTEP/RMR Charges) assessed to the VFT Facility by PJM, and that the Primary Rights Holders "shall pay" them.

3. On two prior occasions, Linden VFT sought and the Commission granted similar limited waivers of Schedule 16.<sup>4</sup> The instant filing is Linden VFT's third request for limited waiver of Schedule 16 and also its second request for limited waiver to accommodate its TSR Auction.<sup>5</sup> Linden VFT states that the first auction-related waiver request (July 2012 Request) was granted by the Commission in the September 2012 Order. As with the July 2012 Request, Linden VFT believes that partial waiver of Schedule 16 is required because the winning bid in the 2013 TSR Auction may be conditioned upon Linden VFT not passing through the RTEP/RMR Charges assessed by PJM. Linden VFT states that it anticipates that the 2013 Auction will be completed in April 2013 and that the 2013 Open Season Report will be filed by May 2013.<sup>6</sup> Therefore, unlike the July 2012 Request, Linden VFT is requesting waiver for the 2013 TSR Auction before the auction takes place.

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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 VFT Facility and assigned firm and non-firm transmission withdrawal rights by the Linden VFT transmission owners.

<sup>4</sup> *Linden VFT, LLC*, 139 FERC ¶ 61,192 (2012) (June 2012 Order) (accepting Linden VFT's petition for approval of two settlement agreements on behalf of itself and Consolidated Edison Energy, LLC and Public Service Energy Resources & Trade LLC, and its request for limited waiver of Schedule 16); *Linden VFT, LLC*, 140 FERC ¶ 61,244 (2012) (September 2012 Order) (accepting Linden VFT's request for limited waiver of Schedule 16 in support of the TSR Auction conducted as part of Linden VFT's 2012 Open Season process (2012 Auction)).

<sup>5</sup> Linden VFT Transmittal Letter at 2; see *Linden VFT, L.L.C. v. New York Independent System Operator Inc.*, 141 FERC ¶ 61,008, at P 32 (2012) (granting Linden VFT an additional 15 MW of TSRs).

<sup>6</sup> Linden VFT Transmittal Letter at 2. Linden VFT did not specify the exact dates of either the 2013 Auction or the submission of the 2013 Open Season Report.

4. In further support of its request, Linden VFT asserts that receiving waiver before the auction will also avoid delaying the approval of the 2013 TSR Auction results and delaying the filing of the 2013 Open Season Report.<sup>7</sup> Linden VFT states that, as with the September 2012 Order, this waiver request satisfies the Commission's stated criteria for granting limited waivers.<sup>8</sup> Finally, Linden VFT asserts that it has been authorized to state that PJM does not object to its requested waiver.

5. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 16,491 (2013), with interventions and protests due on or before March 28, 2013. A motion to intervene was filed by PJM on March 21, 2013. A motion to intervene, along with a protest, was filed by Cargill Power Markets, LLC (Cargill) and Brookfield Energy Marketing, LP (Brookfield) (collectively, Cargill and Brookfield) on March 28, 2013. 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.

6. On April 2, 2013, Linden VFT filed an answer to Cargill and Brookfield's protest. 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 are not persuaded to accept Linden VFT's answer and will, therefore, reject it.

7. In their protest, Cargill and Brookfield request that the Commission deny Linden VFT's request for a limited waiver of PJM Tariff Schedule 16. They state that Linden VFT does not need the requested waiver because Schedule 16, Section 9 already provides that Linden VFT "may bill" certain costs and does not require Linden VFT to pass through RTEP/RMR Charges to its customers.<sup>9</sup> Cargill and Brookfield further state that a TSR Agreement, and not Schedule 16, would authorize or require Linden VFT to pass through such charges.<sup>10</sup> Nevertheless, Cargill and Brookfield state that, if the Commission decides to grant Linden VFT's waiver request, it should do so consistent with previous Commission decisions by limiting the waiver to new TSR Agreements and

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<sup>7</sup> Linden VFT Transmittal Letter at 2. Linden VFT states that the related request PJM and Linden VFT filed on March 5, 2013 (in Docket No. ER13-1033-000) to revise Schedule 16 would remove the need to request waiver in the future. That filing is currently pending before the Commission.

<sup>8</sup> Linden VFT Transmittal Letter at 5.

<sup>9</sup> Cargill and Brookfield Protest at 4.

<sup>10</sup> Cargill and Brookfield Protest at 4.

by confirming that the waiver does not impact the current dispute between Linden VFT and Cargill and Brookfield.<sup>11</sup>

8. The Commission will grant Linden VFT's request for limited waiver of PJM Tariff Schedule 16, to the extent necessary, in advance of the 2013 TSR Auction to permit implementation of the 2013 TSR Auction results and the filing of the 2013 Open Season Report without delay. The Commission has previously 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>12</sup> As stated by Linden VFT, granting the limited waiver of PJM Tariff Schedule 16, to the extent necessary, in advance of the 2013 TSR Auction will assist in the implementation of the 2013 TSR Auction results. Moreover, Linden VFT's limited waiver request applies only to the new TSR agreements resulting from the 2013 TSR Auction.<sup>13</sup> Our grant of Linden VFT's limited waiver request in this proceeding is not meant to impact any other matter between Linden VFT and its customers under other TSR Agreements. Finally, we disagree with Cargill and Brookfield arguments that the Commission should deny Linden VFT's limited waiver request, as it conforms to the

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<sup>11</sup> Cargill and Brookfield Protest at 4 (citing 140 FERC ¶ 61,244, 140 FERC ¶ 61,244 at P 11).

<sup>12</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); *accord 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). The Commission notes that there is also a fourth criteria sometimes used by the Commission in its analysis of waiver requests (i.e., where there was an underlying good faith error), which is not relevant here.

<sup>13</sup> PJM has not opposed Linden VFT's request for limited waiver, and, in fact, as noted earlier, Linden VFT and PJM have jointly filed proposed revisions to Schedule 16, in order to obviate the need to request such waivers in the future.

Commission's requirements for granting waivers. Our grant of waiver is consistent with Cargill and Brookfield's alternate request because, as noted earlier, the waiver is limited to any new TSR Agreements and this proceeding is not meant to impact other pending disputes between Linden VFT and its customers.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.