

143 FERC ¶ 61,214
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 and
PJM Interconnection, L.L.C.

Docket No. ER13-1033-000

ORDER REJECTING PROPOSED TARIFF REVISIONS

(Issued June 6, 2013)

1. On March 5, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Linden VFT, LLC (Linden VFT) submitted proposed tariff revisions amending Linden VFT's tariff which is found at Schedule 16 of the PJM Open Access Transmission Tariff (PJM Tariff).² Linden VFT states the proposed tariff revisions give Linden VFT the option not to pass-through some or all of the transmission related charges³ allocated by PJM and to correct minor typographical errors. As discussed below, the Commission rejects the proposed revisions, without prejudice.

I. Background

2. Linden VFT is a Delaware limited liability company that owns and operates a 345kV Merchant Transmission Facility (Linden Facility)⁴ that creates approximately

¹ 16 U.S.C. § 824d (2006).

² OATT Schedule 16, version 1.0.0 (<http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=136332>). PJM Interconnection, L.L.C. (PJM) filed on behalf of Linden.

³ The PJM transmission charges are the costs associated with: (i) the construction of new transmission in PJM - - Transmission Enhancement Charges, which are provided for under Schedule 12 of the PJM Tariff; and (ii) Generation Deactivation charges (collectively, PJM charges).

⁴ See *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007), *order on clarification*, 120 FERC ¶ 61,242 (2007) (Negotiated Rate Order).

315 MW⁵ of electric transfer capability between the PJM and New York Independent System Operator (NYISO) balancing areas. Service over the Linden Facility is provided pursuant to the PJM Tariff.

3. Both Schedule 16 and the Firm Transmission Scheduling Rights Purchase Agreements (TSR Agreements) between Linden VFT and its transmission customers govern the Linden Facility's capacity.⁶

4. In particular, Schedule 16, Section 9⁷ states that Linden VFT "may bill" the Primary Rights Holders⁸ for Transmission Enhancement Charges and any other charges related to the construction, maintenance, operation or upgrading of the transmission system (RTEP/RMR Charges) that PJM assesses to Linden VFT, and the Primary Rights Holders "shall pay" them.

5. On two prior occasions, Linden VFT sought limited waivers of Schedule 16 to accommodate its 2012 and 2013 Transmission Scheduling Rights Auctions (TSR Auction), respectively.⁹ In its previous requests, Linden VFT argued that the limited waivers were necessary because the winning bidders of the 2012 Auction had submitted a bid that was conditioned upon Linden VFT not passing through the RTEP/RMR Charges assessed by PJM and that it anticipated the 2013 Auction bidders might do so as well.¹⁰

⁵ See *Linden VFT v. NY Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,008 (2012) (granting an additional 15MW of TSRs to the Linden Facility's existing 300 MW capacity, making 315 MW the Linden Facility's new total electric transfer capability).

⁶ *Linden VFT*, 143 FERC ¶ 61,031, at P 2 (2013) (April 2013 Order).

⁷ Schedule 16 provides the terms and conditions for transmission service on the Linden Facility. See *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,240 (2009) (Schedule 16 Order) at PP 4-8.

⁸ 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 Facility and assigned firm and non-firm transmission withdrawal rights by the Linden VFT transmission owners.

⁹ See *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)); *Linden VFT, LLC*, 143 FERC ¶ 61,031 (2013) (accepting Linden VFT's request for limited waiver of Schedule 16 in support of the TSR Auction conducted as part of Linden VFT's 2013 Open Season process (2013 Auction)).

¹⁰ See April 2013 Order, 143 FERC ¶ 61,031 at P 3.

In its 2013 waiver request, Linden VFT also stated that it was going to submit proposed revisions to Schedule 16 which would obviate the need to submit such waiver requests in the future.¹¹ The Commission granted both waiver requests.

II. PJM and Linden VFT's Filing

6. Linden VFT's proposal amends Schedule 16 to give Linden VFT the option to not pass through some or all of the transmission-related charges allocated by PJM to customers taking service on the Linden Facility and to correct typographical errors.¹²

7. In particular, the revisions state:

Linden VFT shall be entitled to waive its right to be reimbursed for some or all of the charges described in this Section 9, which *waiver shall be evidenced by an explicit provision* in the relevant Linden VFT Service Agreement and, in such case, Linden VFT shall not bill the Transmission Customer for the specified charges.¹³

8. The revisions will be added as a new paragraph to the end of Section 16 and "...give Linden VFT the option to pass through none or less than 100% of the Transmission Charges..." that PJM assesses.¹⁴ Linden VFT also proposes a few changes to correct minor typographical errors throughout Schedule 16.

9. Linden VFT and PJM request July 1, 2013, as the effective date for the proposed tariff revisions.

III. Notice of Filing and Responsive Pleadings

10. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 21,927 (2013), with interventions and protests due on or before March 26, 2013. PJM filed a motion to intervene on March 6, 2013. Cargill Power Markets, L.L.C. (Cargill) and Brookfield Energy Marketing LP (Brookfield) (collectively, Cargill and Brookfield) jointly filed a motion to intervene and protest on March 26, 2013. On April 1, 2013, Linden VFT filed an answer to Cargill and Brookfield's protest.

¹¹ *Id.* n.13.

¹² Linden VFT Transmittal at 1.

¹³ Linden VFT Transmittal at 3 [emphasis added].

¹⁴ Linden VFT Transmittal at 3.

IV. Discussion

A. Procedural Matters

11. 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.

12. 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 the answer that Linden VFT filed in this proceeding because it has provided information that assisted us in our decision-making process.

B. Responsive Pleadings

13. In their protest, Cargill and Brookfield assert that Linden VFT's proposed changes to Schedule 16 should be rejected because: (1) the changes are erroneously based on the assumption that Linden VFT has an absolute right to be reimbursed for the charges set forth in Section 9 of Schedule 16 when it has no such right; and (2) the changes are unnecessary given the existing language and history of Schedule 16.¹⁵ Cargill and Brookfield state that, if Linden VFT's proposed language is accepted by the Commission, Schedule 16 could be read to allow Linden VFT to pass through the PJM charges to Cargill and Brookfield under their existing TSR Agreements, even if those agreements do not provide for such a pass-through.

14. In its answer, Linden VFT asserts that the Commission should disregard Cargill and Brookfield's protest. Linden VFT argues that it has no intention to rely on the revisions to interpret Schedule 16 as it applies to Cargill's and Brookfield's terminated and remaining TSR Agreements.¹⁶ Linden VFT states the Commission has already considered Cargill and Brookfield's protests in Linden VFT's previous waiver requests and despite these protests, the Commission granted the waivers. Finally, Linden VFT states that the proposed revisions are being proposed to avoid delays in future TSR Auctions, improve efficiency and reduce Linden VFT's own workload.¹⁷

¹⁵ Cargill and Brookfield Protest at 1.

¹⁶ Linden VFT Answer at 4.

¹⁷ Linden VFT Answer at 2.

C. Commission Determination

15. We reject Linden VFT's proposed revisions to Schedule 16 because the added provision renders the existing tariff unclear.¹⁸ Linden VFT's proposed addition to Schedule 16 states in part, that "Linden VFT shall be entitled to waive its right to be reimbursed for some or all of the charges described in this Section 9." However, nowhere else in Section 9 of Schedule 16 does it refer to Linden VFT having a "right" to collect such charges. Rather, the tariff currently indicates that Linden VFT "may bill" for such charges if included in the transmission service agreement. The use of the term "may" is permissive, allowing Linden VFT to recover such costs if it includes the costs in its transmission service agreement, but does not independently impose an obligation to pay these costs. This interpretation is consistent with our decision accepting Schedule 16 in which the Commission stated:

[s]chedule 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.*¹⁹

Moreover, Linden VFT modeled Schedule 16 on a similar Neptune tariff provision that similarly uses the phrase "may bill."²⁰ In denying a request for rehearing filed by Linden VFT in the proceeding that determined to allocate these costs to merchant transmission providers, the Commission noted that Neptune established such cost responsibility through "contract," not as a matter of right.²¹

16. In its filing, Linden VFT references the waivers previously granted by the Commission of Schedule 16, Section 9 to allow Linden VFT to not pass through these costs to its customers as somehow indicative of the Commission's agreement that waivers of Schedule 16, Section 9 were necessary. In acting on these waivers, however, the Commission emphasized it was accepting them *only to the extent necessary* to accept the

¹⁸ See *Boston Edison Co.*, 98 FERC ¶ 61,292 (2002) (Commission has an interest in ensuring that tariffs clearly, completely and unambiguously identify services, rates and terms and conditions).

¹⁹ *PJM Interconnection, LLC*, 127 FERC ¶ 61,240, at P 19 (2009) (internal citations omitted) (emphasis provided).

²⁰ OATT Schedule 14, 0.0.0 (§9) (<http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=66403>)

²¹ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,242 at P 29 (2012).

settlement agreements.²² The Commission did not find that the waivers were necessary or that Linden VFT had a right under its tariff to collect these charges.

17. While we reject the filing because the tariff, as proposed to be revised, is unclear, we express no opinion on the merits of a differently written filing by Linden VFT to amend its tariff.

The Commission orders:

The Commission hereby rejects the proposed revisions to Schedule 16, Section 9 for reasons discussed in within this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² See *Linden VFT, LLC*, 143 FERC ¶ 61,031, at PP 1, 8 (2013); *Linden VFT, LLC*, 139 FERC ¶ 61,192, at PP 1, 18 (2012); *Linden VFT, LLC*, 140 FERC ¶ 61,244, at PP 1, 11 (2012).