

144 FERC ¶ 61,070
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.

PJM Interconnection, L.L.C.
Public Service Electric and Gas Company

Docket Nos. ER13-1617-000
ER13-1619-000

ORDER ACCEPTING UNEXECUTED SERVICE AGREEMENT AND
TERMINATING SUPERSEDED SERVICE AGREEMENTS

(Issued July 30, 2013)

1. On May 31, 2013, PJM Interconnection, L.L.C. (PJM) filed an unexecuted interconnection service agreement (ISA) among PJM, Public Service Electric and Gas Company (PSE&G) and Linden VFT, L.L.C. (Linden VFT) (the Linden VFT ISA).¹ The Linden VFT ISA was filed unexecuted at the request of Linden VFT, who objected to certain non-standard terms and conditions. Additionally, in a separate filing, PJM submitted a notice of cancellation of certain ISAs that are superseded by the Linden VFT ISA.² For the reasons discussed below and for good cause shown, the Commission accepts the Linden VFT ISA for filing effective May 31, 2013, and accepts the notice of cancellation, also effective May 31, 2013, as requested.

Background

2. In Docket No. ER06-649-000,³ the Commission accepted an unexecuted ISA (East Coast Power ISA) and an unexecuted construction service agreement (East Coast Power CSA) among PJM, East Coast Power, L.L.C. (East Coast) and PSE&G. The

¹ The Linden VFT ISA is designated as Original Service Agreement No. 3579 under the PJM Interconnection, L.L.C. Open Access Transmission Tariff (PJM Tariff).

² Original Service Agreement Nos. 3313 and 1410 under the PJM Tariff.

³ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,052 (2006) (*PJM ISA Order*).

interconnection facility at issue was a merchant transmission project designated as the “Variable Frequency Transformer Facility [VFT] at the Linden Cogeneration Facility,” which was to be interconnected with the PJM transmission system. In that proceeding, PSE&G argued that PJM allocated an artificially low level of network upgrade costs to the East Coast⁴ project and that East Coast was not bearing any upgrade cost responsibility associated with generation retirements on the PJM system.⁵ PJM explained in its answer that East Coast had initially requested both injection and withdrawal rights into the PJM transmission system; however, due to the \$16 million cost for network upgrades, East Coast subsequently decided that it only wanted withdrawal rights at the interconnection point, and the network upgrades associated with these rights were estimated at approximately \$1.5 million.⁶ Notwithstanding PSE&G’s protest over upgrade costs, the Commission approved the East Coast Power ISA and CSA on the basis of withdrawal rights only at the point of interconnection.⁷

3. In Docket No. ER12-1717-000,⁸ the Commission subsequently accepted an ISA necessary to accommodate Linden VFT’s request for non-firm transmission injection rights on an interim basis prior to the execution of a final ISA (the Interim ISA). The filing of the instant Linden VFT ISA supersedes the Interim ISA among the same parties.

Filings

4. PJM states that the Linden VFT ISA facilitates the interconnection to the PJM transmission system of 315 MW of nominal rated capability for Linden VFT’s pre-existing facility located in Linden, New Jersey. As mentioned above, the Linden VFT ISA contains non-standard terms and conditions. First, Section 2.1 of the “Specifications” separates out transmission injection rights by “energy” and “capacity.”⁹

⁴ In April 2009, prior to commercial operation of the of the VFT project, East Coast assigned its development rights and the East Coast Power ISA to its affiliate, Linden VFT.

⁵ *PJM ISA Order*, 115 FERC ¶ 61,052 at P 7.

⁶ *Id.* P 8.

⁷ *Id.* P 12.

⁸ *See PJM Interconnection, L.L.C.*, Docket No. ER12-1717-000 (June 4, 2012) (delegated letter order).

⁹ PJM Transmittal Letter, Docket No. ER13-1619-000 at PP 2-3.

The Linden VFT ISA indicates that Linden VFT will receive 315 MW of energy transmission injection rights immediately upon execution of the Linden VFT ISA and 315 MW of capacity transmission injection rights upon completion of Regional Transmission Expansion Plan baseline upgrade b1304, which is estimated to be completed by June 2015.¹⁰

5. Second, PJM states that Schedule F provides that, under the East Coast Power ISA, East Coast chose the option to build a 230 kV three-breaker ring bus interconnection switchyard to connect the Linden VFT facility.¹¹ The transfer of those 230 kV facilities from Linden VFT to PSE&G, provided for in the East Coast Power CSA, has not occurred to date.¹² Third, PJM states that Schedule F also provides that PSE&G does not waive any rights it may have with respect to recovery of a gross-up tax due to the transfer of the ownership of the Linden VFT Switchyard to PSE&G.

6. PJM submits that the non-standard terms and conditions listed above are reasonable as they accommodate the unique circumstances associated with the interconnection and will not adversely impact the reliability of the PJM system.

7. Additionally, PJM states that Schedule E contains a schedule of charges, which was provided by PSE&G.¹³ Specifically, Schedule E contains a description regarding Administrative, Metering, Telemetry, and Operating and Maintenance Charges, if any, that PSE&G will charge Linden VFT for maintenance and repairs. As stated, PSE&G will charge Linden VFT its actual costs to perform the maintenance on the attachment facilities listed on Schedule E of the Linden VFT ISA.¹⁴ According to the explanation provided by PSE&G, the charges are non-reoccurring but will be charged to Linden VFT on an “as-needed” basis and determined by the time and materials required for the

¹⁰ *Id.*

¹¹ *Id.* P 3.

¹² *Id.* PP 3-4 (citing Schedule F, Schedule of Non-Standard Terms and Conditions).

¹³ *Id.*

¹⁴ Schedule E, O&M Charges: “Attachment Facilities beginning at the Linden VFT facility’s Point of Interconnection (POI) and extending to the connection at PSE&G’s 230kV Bus, including the 230kV disconnect switch and associated line protection relaying equipment.”

activity. Also according to PSE&G, the Commission has previously accepted the Schedule E, Schedule of Charges in another proceeding.¹⁵

8. PJM states that the agreement is being filed in unexecuted form because Linden VFT has objected to the inclusion of Schedule E charges and to PSE&G's rights to recovery of the gross-up for income or other tax liability.

9. PJM requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of May 31, 2013. In support, PJM states that waiver is appropriate because the Linden VFT ISA is being filed within 30 days of the date on which Linden VFT requested that the ISA be filed unexecuted. PJM also asserts that permitting an effective date of May 31, 2013 will provide for a seamless transition of service.

10. In a separate filing also submitted on May 31, 2013, PJM filed a notice of cancellation of the East Coast Power ISA, filed in Docket No. ER06-649-000, and the Interim ISA, filed in Docket No. ER12-1717-000. PJM explains that these agreements are superseded by the Linden VFT ISA. PJM requests an effective date of May 31, 2013, consistent with the effective date requested for the Linden VFT ISA.

Notice of Filings and Responsive Pleadings

11. Notice of PJM's May 31, 2013 filings was published in the *Federal Register*, 48 Fed. Reg. 34,658 (2013) with interventions and protests due on or before June 21, 2013. Linden VFT filed a timely motion to intervene and protest of PJM's submittal in Docket No. ER13-1619-000. PSE&G filed an answer on July 9, 2013.

12. In its protest, Linden VFT states that, on May 15, 2013, after negotiations had been completed with respect to the Linden VFT ISA, PSE&G noticed that there were no charges in Schedule E and requested that PJM add a description of the charges that Linden VFT would pay PSE&G for operation, maintenance and repair for the existing attachment facilities. According to Linden VFT, the filing of a superseding ISA for additional use of the existing attachment facilities should not provide PSE&G with an opportunity to demand payment for charges that are not authorized in the existing ISA. Linden VFT also contends that PSE&G's attempt to impose these charges is contrary to

¹⁵ PJM Transmittal Letter, Docket No. ER13-1619-000, at 4 (citing *PJM Interconnection, L.L.C.*, delegated letter order issued in Docket No. ER10-575-000 (March 4, 2010) (delegated letter order)).

the Commission's goal of fostering competition and reducing barriers to entry for transmission service.¹⁶

13. With respect to PSE&G's justification for the charges in the Linden VFT ISA, that "[s]uch schedule of charges has been previously accepted by the Commission," Linden VFT contends that the unopposed ISAs with ten affiliated generation companies in 2010 provide no support for PSE&G's current demand.¹⁷ Linden VFT also notes that the delegated letter order stated that its acceptance of those ISAs should not be construed as either approval or precedent.¹⁸

14. Linden VFT contends that the East Coast ISA does not authorize PSE&G to recover operations and maintenance (O&M) charges from Linden VFT and what PSE&G seeks here is to unilaterally amend its contract rights that were negotiated in 2006. Linden VFT asserts that existing agreements are presumed just and reasonable, and they cannot be unilaterally amended absent a demonstration that the public interest would be adversely affected.¹⁹ Therefore, Linden VFT requests that the Commission issue an order directing PJM to file a revised Linden VFT ISA deleting the Schedule E O&M Charges.

15. Linden VFT did not object to or address PJM's request for waiver of the 60-day notice requirement.

¹⁶ Linden VFT Protest at 3 (citing, e.g., *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

¹⁷ Linden VFT Protest at 4.

¹⁸ *Id.*

¹⁹ *Id.* (citing *New England Power Generators Ass'n. v. FERC*, 707 F.3d 364 (D.C. Cir. 2013) (reiterating that an existing contract is presumed to be just and reasonable pursuant to *Mobile Sierra* doctrine; and a public utility cannot unilaterally amend or abrogate an existing agreement unless it can be shown that "the rate is so low as to adversely affect the public interest – as where it might impair the financial ability of the public utility to continue its service might be impaired...")).

16. In its answer, PSE&G advises that, contrary to Linden VFT's assertion, the East Coast Power ISA was neither negotiated nor executed by PSE&G.²⁰ PSE&G reiterates that the instant Linden VTF ISA is not an amendment to an existing agreement but rather a new ISA filed in order to facilitate Linden VFT's interconnection to the PJM network for energy transmission injection rights and capacity transmission injection rights.²¹ PSE&G asserts that the Commission has supported the filing of a new, superseding agreement when there is a modification to the characteristics of an existing facility that is interconnected with the PJM transmission system.²² PSE&G further argues that the requirements of PJM's FERC approved, *pro forma* ISA explicitly permit the inclusion of operations and maintenance charges in Schedule E, citing Appendix 2, Section 10.1, of the Linden VFT ISA.²³

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2013), answers to protests are not accepted unless otherwise ordered by the decisional authority. The Commission will accept PSE&G's answer because it has provided information that assisted in our decision making process.

²⁰ PSE&G Answer at 3.

²¹ *Id.*

²² *Id.* (citing *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,168, at P 32 (2006) (*Elwood Case*)).

²³ *Id.* 4, (citing Linden VFT ISA, Appendix 2, Section 10.1: "If and to the extent required by the Interconnected Transmission Owner, after the Initial Operation of the Customer Facility, Interconnection Customer shall pay one or more of the types of recurring charges described in this section to compensate the Interconnected Transmission Owner for costs incurred in performing certain of its obligations under this Appendix 2. All such charges shall be stated in Schedule E of the Interconnection Service Agreement. ... (d) Customer Facility Operations and Maintenance Charge – Any such charge may recover only the Interconnected Transmission Owner's costs and expenses associated with operations, maintenance, inspection, testing, modifications, taxes, and carrying or capital replacement for Attachment Facilities related to the Interconnection Customer's Interconnection Service and that are owned by the Interconnected Transmission Owner...").

Discussion

18. We accept the Linden VFT ISA and the cancellation of the East Coast Power ISA (to which Linden VFT is a successor in interest) and the Interim ISA. In addition, pursuant to section 35.11 of the Commission regulations (18 C.F.R. § 35.11 (2013)), we find good cause to waive the 60-day notice requirement²⁴ and therefore, permit the Linden VFT ISA to become effective May 31, 2013, as requested.

19. PJM's filing of the Linden VFT ISA includes the same terms and facilities as the existing East Coast Power ISA and adds to that agreement Linden VFT's new transmission injection rights, which require the construction of no new facilities. The filing proposes to revise the East Coast Power ISA to provide for the collection of O&M expenses for attachment facilities that were identified in that ISA. We find that a transmission owner's revision to an existing ISA to provide for collection of expenses related to owning, operating and maintaining interconnection facilities is reasonable. Even though PSE&G did not include O&M charges in the East Coast Power ISA, Order No. 2003 and section 10.1 of the *pro forma* ISA do not preclude PSE&G from making a filing under section 205 of the Federal Power Act to remedy its oversight and collect these charges on a going forward basis. PSE&G is not seeking to revise the facilities under the East Coast Power ISA, but only is providing for the ongoing collection of O&M costs with respect to those facilities. Such a filing is consistent with Order No. 2003 and section 10.1 of PJM's *pro forma* ISA which specifically permit the collection O&M charges associated with attachment facilities.²⁵ Therefore, we deny Linden VFT's protest.

²⁴ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

²⁵ See *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) (Proposed Large Generator Interconnection Agreement, Article 10 makes the Interconnection Customer responsible for all reasonable expenses of owning, operating and maintaining Interconnection Customer and Transmission Provider Interconnection Facilities (except for O&M expenses associated with modifications necessary for providing service to a third party that pays for such expenses); see also PJM Tariff, Attachment O, Appendix 2, section 10.1. See also *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004) (accepting PJM's Order No. 2003 compliance filing subject to conditions not related to this matter)).

The Commission orders:

(A) The Linden VFT ISA designated as Original Service Agreement No. 3579 is accepted for filing.

(B) Original Service Agreement Nos. 1410 and 3313 are cancelled.

(C) Waiver of the 60-day prior notice requirement to permit the Linden VFT ISA and associated ISA terminations to become effective on May 31, 2013, is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.