162 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Linden VFT, LLC   Docket No. ER18-730-000

ORDER GRANTING APPLICATION FOR AUTHORIZATION TO CHARGE NEGOTIATED RATES, SUBJECT TO CONDITION

(Issued March 30, 2018)

1. On January 29, 2018, Linden VFT, LLC (Linden), submitted a request to amend its existing authority to sell transmission capability on the Linden VFT merchant transmission facility (Project) at negotiated rates. Specifically, Linden seeks authority to subscribe up to 100 percent of the Project's transmission capacity to one or more anchor customers and to sell any remaining transmission capability through an additional open solicitation process, subject to post-allocation compliance filings to demonstrate that the selection of customers is consistent with the Commission's Policy Statement on merchant transmission capacity allocation.[1] As discussed below, we authorize Linden to charge negotiated rates for transmission rights to the Project, as requested, subject to its submission of post-allocation compliance filings.[2]

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[1] *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Project; Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038, at PP 15, 23 (2013) (Policy Statement).

[2] Under the Commission's precedent, merchant transmission projects differ from those of traditional public utilities in that the developers of merchant transmission projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project. Thus, on a case-by-case basis, the Commission has allowed merchant transmission projects to be priced based on negotiated rates. *See, e.g.*, *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (*Hudson Transmission*); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*); *Maine Power Express*, LLC, 156 FERC ¶ 61,002 (2016); *Lake Erie*

I. Background

A. Applicant

2. Linden states that it is a limited liability company that was formed for the purpose of owning and operating the Project. Linden also notes that it is a wholly-owned subsidiary of Linden VFT Holding LLC, which is a wholly-owned subsidiary of Power Holder LLC, which, in turn, is a wholly-owned subsidiary of General Electric Company.[3]

3. Linden further states that it was previously affiliated with East Coast Power Linden Holding, L.L.C. (ECP Linden Holding) and Cogen Technologies Linden Venture, L.P. (Linden Cogen), which own and operate the Linden cogeneration facility located in New Jersey. Linden Cogen owns and operates units 1-5, which are interconnected to the New York Independent System Operator, Inc. (NYISO) transmission system. ECP Linden Holding owns and operates unit 6, which is interconnected to the PJM Interconnection, L.L.C. (PJM) transmission system. Linden states that it is no longer affiliated with the Linden cogeneration facility.[4]

B. Description of Project

4. Linden states that the Project is currently authorized to sell transmission scheduling rights for 100 percent of the Project's transmission capability, pursuant to its initial grant of negotiated rate authority.[5] Linden describes the Project as a fully controllable AC merchant transmission line that commenced operations in 2009 and connects with PJM in northern New Jersey and with NYISO at the Goethals substation in Staten Island, New York. The Project transmits electricity bi-directionally between PJM and NYISO using variable frequency transformer technology.[6]

5. Linden notes that, as of December 31, 2017, it converted 330 MW of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights from

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CleanPower Connector, 144 FERC ¶ 61,203 (2013); Policy Statement 142 FERC ¶ 61,038 (2013).

[3] Filing at 3.

[4] Filing at 4, 15.

[5] Filing at 1 (citing *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007) (Linden Negotiated Rate Order)).

[6] *Id.* at 4.

PJM.[7] Linden adds that it has 315 MW of Capacity and Energy Transmission Injection Rights into PJM; 315 MW of Unforced Capacity Deliverability Rights into the NYISO Zone J Goethals substation; 315 MW of export capability from NYISO; and 330 MW of firm point-to-point transmission service from PJM to the Project. Currently, Linden resells its firm point-to-point transmission service to its transmission scheduling rights customers through PJM's Open Access Same-Time Information System (OASIS).[8] With respect to the instant filing, Linden is addressing only transmission scheduling rights and negotiated rate authority for these rights; customers still will be required to acquire point-to-point transmission service for their generation through PJM's OASIS.

6. Linden states that it currently auctions its transmission capability for periods ranging from one to five years to customers through open seasons. Linden notes that winning bidders are selected based on the level of fees each will pay to Linden, and that each may choose to use the transmission scheduling rights in a variety of ways. For example, customers may couple their transmission scheduling rights with specific resource(s) to sell into the PJM or NYISO markets, use the transmission scheduling rights as a marketing opportunity to arbitrage price differentials, or release their transmission scheduling rights capacity for purchase by other potential customers via Linden's OASIS website. Linden emphasizes that its sole revenues come from fees paid as a result of the open seasons.[9]

7. Linden states that, since 2007, it has held five open seasons that were fair, transparent, and non-discriminatory, using an independent evaluator to help administer and evaluate bids objectively.[10] However, Linden claims that there has been a decrease in the level of interest for its transmission scheduling rights, as evidenced by the declining number and diversity of participants and qualified bidders, resulting in shorter-term contracts.[11] As of June 2018, Linden states, PSEG Energy Resources & Trade will hold 100 percent of the Linden Project's transmission scheduling rights.[12]

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[7] *Id.* at 4-5.

[8] *Id.* at 5.

[9] *Id.* at 6.

[10] *Id.* at 6-7.

[11] *Id.* at 7.

[12] *Id.* at 8.

8. Linden states that potential new customers have approached Linden directly seeking longer-term, more tailored arrangements to transport energy between PJM and NYISO. Linden asserts that the ability to subscribe up to all of the Project's transmission capability through such longer-term arrangements with anchor customers will allow it to explore more sustainable, alternative business models and allocate its Project's transmission scheduling rights to the market participants who value them the most.[13]

C. Application

9. Linden seeks to amend its existing authorization to charge negotiated rates for the Project to include the authority to sell transmission capability on the Project at negotiated rates for up to 100 percent of the Project's capacity to one or more anchor customers, which may entail arrangements of varying durations and with varying payment arrangements. Linden further seeks to amend its existing authorization to include the authority to sell the rest of the capacity, if any, at market-based rates through one or more open solicitation process(es).[14]

10. Linden notes that the varying payment structures may involve arrangements different than the fee-based approach that Linden currently uses. Nevertheless, Linden commits to maintaining its independent evaluator to assess bids, assist in the development of objective selection criteria, and ensure that the open solicitation process is conducted in a transparent and non-discriminatory manner. Linden also commits to offer the same rates, terms, and conditions that any anchor customers receive to other bidders participating in open solicitations. Lastly, Linden commits to filing with the Commission (i) a post-solicitation compliance filing(s) that demonstrate(s) that the customer selection process is executed in a manner that is consistent with the Commission's open access policies, and (ii) open solicitation reports following the conclusion of open solicitations for remaining transmission capability, if any.[15]

II. Notice, Intervention, and Responsive Pleadings

11. Notice of Linden's filing was published in the *Federal Register*, 83 Fed. Reg. 5092 (2018), with interventions and protests due on or before February 20, 2018. None were filed.

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[13] *Id.*

[14] *Id.* at 9.

[15] *Id.* at 9-10.

III. **Discussion**

12. As discussed below, we grant Linden authority to sell transmission rights on the Project at negotiated rates, subject to the Commission's approval of a compliance filing to be submitted within 30 days after the close of the open solicitation process, providing the details necessary to judge the open solicitation and capacity allocation process.[16] In the Linden Negotiated Rate Order, the Commission granted Linden's request to charge negotiated rates for the Project based on the circumstances presented at that time, including the Project's open season process.[17] Given that the Commission has changed its policies with respect to its review of applications for authorization to charge negotiated rates since the Commission last granted Linden such authority,[18] and that Linden now requests authorization to allocate up to 100 percent of the Project's capacity to one or more anchor customers, the specific circumstances that the Commission evaluated in granting Linden's original request for negotiated rate authority have changed. Thus, we will conduct a *de novo* analysis to determine whether the Project meets the requirements for negotiated rate authority.[19]

13. In evaluating negotiated rate applications, the Commission employs a four step analysis outlined in *Chinook*[20] that focuses on four areas of concern: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements. This approach, which is further developed in the Policy Statement, simultaneously acknowledges the financing realities faced by merchant transmission developers, the mandates of the Federal Power Act, and the Commission's

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[16] The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications*." *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

[17] Linden Negotiated Rate Order, 119 FERC ¶ 61,066 at PP 19-23.

[18] *See Chinook*, 126 FERC ¶ 61,134; *Zephyr Power Transmission, LLC*, 139 FERC ¶ 61,020 (2012); and Policy Statement, 142 FERC ¶ 61,038.

[19] *See MATL LLP & Montana Alberta Tie, Ltd.*, 139 FERC ¶ 61,208, at P 11 (2012); *see also Zephyr Power Transmission, LLC*, 139 FERC ¶ 61,020 at P 21; *ITC Lake Erie Connector LLC,* 158 FERC ¶ 61,026 at P 11 (2017).

[20] *Chinook*, 126 FERC ¶ 61,134 at P 37.

open access requirements.[21] Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant transmission projects that can differ substantially from one project to the next.

A. <u>Factor One: Just and Reasonable Rates</u>

14. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.[22] In determining whether negotiated rates will be just and reasonable, the Commission considers whether the merchant transmission developer has assumed the full market risk for the cost of constructing its proposed project and is not building within the footprint of the developer's (or an affiliate's) traditionally regulated system. In such a case, there are no captive customers who would be required to pay the costs of the project. The Commission will also consider whether the developer or an affiliate already owns transmission facilities in the region where the project is to be located, what alternatives customers have, whether the developer is capable of erecting any barriers to entry among competitors, and whether the developer would have any incentive to withhold capacity.[23]

1. <u>Linden's Proposal</u>

15. Linden states that it has assumed all market risk and will continue to do so under its proposed amendment. Linden explains that, currently, the fixed and operating costs from the Project are recovered solely from revenues received from the sale of transmission scheduling rights at negotiated rates.[24] Linden adds that it does not directly or indirectly own or control any transmission or pipeline facilities through any affiliate, and is not affiliated with any load serving entity. Linden states that it has no captive customers and no ability to pass on the Project's costs to any captive customers. Further, Linden explains that its current customers are committed by contract through May 31, 2019, and will not be affected by Linden's proposed amendments, which will not become effective until June 1, 2019.[25] Linden further states that it is no longer affiliated with ECP Linden Holding and Linden Cogen and notes that, regardless, the Commission has

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[21] *Chinook*, 126 FERC ¶ 61,134 at P 37.

[22] *Id.*; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

[23] *Chinook*, 126 FERC ¶ 61,134 at P 38.

[24] Filing at 15.

[25] *Id.*

previously determined that these entities presented no cross-subsidization concerns.[26] Linden explains it has common control of about 2,250 MW of generation in PJM with Birchwood Power Partners, L.P., EFS Parlin Holdings, LLC, and Homer City Generation, L.P., which Linden describes as a *de minimis* level of generation compared to the installed capacity of over 180,000 MW in the PJM region. Thus, Linden states its affiliates cannot create barriers to market entry, and Linden has no incentive to withhold capacity.[27]

2. **Commission Determination**

16. Based upon the information provided in its application, we find that Linden's request for authorization to charge negotiated rates has met the first of the *Chinook* factors. Linden has assumed full market risk for Project,[28] which is currently in service, and will continue to do so under its proposal. Linden, moreover, is not associated with any load serving entity and has no captive customers. Linden has common control over 2,250 MW; however, this is only partial control over a minimal amount of total installed generation capacity.[29] Linden does not directly or indirectly own or control any electric transmission facilities or pipeline facilities through an affiliate. No customer is required to purchase transmission service from Linden and Linden's rates are capped by the differential in rates between PJM and the NYISO. Additionally, customers have the alternative of seeking transmission from incumbent owners in the area. Further, Linden and its affiliates are not capable of erecting any barriers to market entry in PJM or NYISO and have no incentive to withhold capacity on the Project. In addition, the Project is currently under the operational control of PJM, which Linden does not propose to change. Accordingly, we find that the Project satisfies the first factor of our negotiated rate analysis.

B. **Factor Two: Undue Discrimination**

17. As explained in *Chinook*, in order to prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission has considered:

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[26] Filing at 15 (citing Linden Negotiated Rate Order, 119 FERC ¶ 61,066 at P 28).

[27] Filing at 15-16 (citing Updated Market Power Analysis for Northeast Region of Birchwood Power Partners, L.P., *et al.*, Docket Nos. ER10-2633, *et al.* (filed Jun. 19, 2017)).

[28] Linden Negotiated Rate Order, 119 FERC ¶ 61,066, at P 17.

[29] *See* Updated Market Power Analysis for Northeast Region of Birchwood Power Partners, L.P., *et al.*, Docket Nos. ER10-2633, *et al.* (filed Jun. 19, 2017)).

(1) the terms and conditions of a merchant transmission developer's open season; and (2) its tariff commitments (or in the case of an interconnection with a regional transmission organization (RTO) or an independent system operator (ISO), its commitment to turn over operational control to that regional entity).[30] The Policy Statement provides an alternative to conducting a formal open season, allowing a developer to demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the Policy Statement.[31] Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.[32]

18. In the Policy Statement, the Commission states that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.[33] Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including the following: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).[34] The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.[35]

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[30] *Chinook*, 126 FERC ¶ 61,134 at P 40.

[31] Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

[32] *Id.* P 16.

[33] *Id.* P 23.

[34] *Id.* P 20.

[35] *Id.* PP 24-27.

19. Additionally, in the Policy Statement, the Commission stated that merchant transmission developers must disclose the results of their capacity allocation process. The merchant transmission developer's disclosure would be part of the Commission's approval of the capacity allocation process and thus noticed and acted upon under Federal Power Act section 205. Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the Policy Statement in order to provide transparency to the Commission and interested parties.[36]

20. The Policy Statement emphasizes that the information in the post-selection demonstration is an essential part of a merchant transmission developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.[37] The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

1. Linden's Proposal

21. Linden states that it turned over operational control of the Project to PJM when the Project went into service, in 2007, and that, under its proposed amendment, PJM will continue to operate and dispatch the Project subject to PJM's Open Access Transmission Tariff (Tariff).

22. Linden asserts that it will engage potential customers in an open solicitation process in compliance with *Chinook* and the Policy Statement, in conjunction with bilateral negotiations with potential customers.[38] Linden states that it will provide notice

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[36] Policy Statement, 142 FERC ¶ 61,038 at P 30.

[37] *Id.* P 32.

[38] Filing at 17.

of its intent to subscribe up to 100 percent of the Project to an anchor customer and/or customers under contracts of varying length and payment structures. Linden notes that, consistent with the Policy Statement, it will sell transmission capability not subscribed to anchor customers in the open solicitation process and/or in subsequent open solicitations.[39]

23. Linden states that the initial open solicitation and any subsequent solicitations will be posted to its website and will be conducted pursuant to comprehensive selection criteria and bidding rules.[40] Linden explains that each open solicitation will provide advance notice to interested customers through a press release issued through industry publications and a market participant distribution list. Linden states that it will continue to report on the results of its open solicitations, consistent with its existing authorizations.[41] Linden adds that an independent evaluator will assist in developing selection criteria and will oversee the review of the open solicitation process to ensure it is conducted in a non-discriminatory manner. Linden adds that the independent evaluator will continue to evaluate bids of different contract lengths and different fee-based arrangements, including revenue sharing approaches, on an objective basis.[42] Linden states that it also commits to a post-solicitation compliance filing with the Commission, once bilateral negotiations are complete, demonstrating that the customer selection process is consistent with the Policy Statement and the Commission's open access policies.[43]

24. Linden states that, in the event that it does not subscribe 100 percent of the Project's capacity through the initial open solicitation, it will offer the same rates, terms,

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[39] *Id.*

[40] *Id.* (citing Report on Open Season of Linden VFT, LLC, Docket No. ER07-543-000 (filed June 10, 2015)).

[41] *Id.* at 18, n.27 (citing *Linden VFT, LLC*, Docket No. ER07-543-003 May 31, 2013 (delegated order)).

[42] *Id.* at 9. Linden notes that this practice is similar to how an independent evaluator currently evaluates bids in open seasons for transmission scheduling rights on the Project using an indifference curve that compares bids of different contract lengths. *Id*.

[43] *Id.* at 10.

and conditions that are provided to anchor customers to participants in future open solicitations.[44]

2. Commission Determination

25. Linden commits to file the results of its open solicitation allocation process(es) in which it will demonstrate that the process(es) comply with the Commission's open access policies and the Policy Statement. Linden also proposes to continue its existing practice of filing a report on the open solicitation process for informational purposes only.[45]

26. We clarify that Commission approval of the open solicitation process(es) will not be granted through Linden's existing practice of filing a report on open solicitation process(es) for informational purposes only. To satisfy the second factor of our negotiated rate analysis, Linden must, as it commits to do, make a compliance filing with the Commission within 30 days of the close of the open solicitation process disclosing the results of its capacity allocation process and demonstrating that its capacity allocation was consistent with the Policy Statement and the Commission's open access policies.[46] We will reserve judgment on the open solicitation process(es) pending Linden's compliance filing.[47]

27. As noted in Linden's filing, it commits to allocate up to 100 percent of the Project's initial capacity through an open solicitation process consistent with the requirements of the Policy Statement. Linden further commits to offer the same rates, terms and conditions that are provided to anchor customers to participants in future open solicitations, in the event that Linden does not subscribe 100 percent of the Project's capacity through the initial open solicitation process. Linden also commits to utilize an independent evaluator that will assist in developing the selection criteria, and evaluate the bids of prospective customers.

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[44] *Id.* at 19.

[45] Filing at 18, n.27 (citing Linden Negotiated Rate Order, 119 FERC ¶ 61,066 at P 26).

[46] *See* Policy Statement, 142 FERC ¶ 61,038 at P 31 (addressing how the Commission will evaluate a post-solicitation compliance report).

[47] *Anbaric Development Partners, LLC*, 162 FERC ¶ 61,097, at P 23 (2018); *ITC Lake Erie Connector LLC,* 158 FERC ¶ 61,026 at P 25; *Maine Power Express, LLC*, 156 FERC ¶ 61,002 at P 22; *Lake Erie CleanPower Connector,* 144 FERC ¶ 61,203 at P 21.

28. The Project will also continue to be under PJM's operational control. As established under its existing authorizations, Linden will continue to: (1) ensure that the books and records for the Project will comply with Part 101 of the Commission's regulations and will be subject to examination as required in Part 41 of the Commission's regulations; (2) file financial statements and reports in accordance with Part 141.14 and 141.15 of the Commission's regulations; and (3) employ an independent auditor to audit its books and records.[48] These commitments will assist the Commission in carrying out its oversight role.[49]

C. Factor Three: Undue Preference and Affiliate Concerns

29. In the context of merchant transmission, the Commission's concerns regarding the potential for affiliate abuse arise when the merchant transmission developer is affiliated with either the anchor customer, participants in the open season or solicitation, or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.[50]

1. Linden's Proposal

Linden states that, while it is no longer affiliated with Linden Cogen or ECP Linden Holding,[51] it is possible that one or more affiliates that own generation capacity in PJM may approach Linden to seek transmission capacity on the Project through the open solicitation process(es). Linden states that it will have an independent evaluator oversee each open solicitation process, and commits that all rates, terms, and conditions that are offered to anchor customers will be offered to participants in future open solicitations for any remaining capacity.

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[48] 18 C.F.R. pts. 41,101,141 (2017).

[49] *Anbaric Development Partners, LLC*, 162 FERC ¶ 61,097 at P 25; *ITC Lake Erie Connector LLC,* 158 FERC ¶ 61,026 at P 26; *Maine Power Express, LLC*, 156 FERC ¶ 61,002 at P 24; *Lake Erie CleanPower Connector,* 144 FERC ¶ 61,203 at P 22.

[50] Policy Statement, 142 FERC ¶ 61,038 at P 34.

[51] Filing at 3-4, 15 (noting that these entities own a cogeneration facility immediately adjacent to the Project and that Linden is not affiliated with a load serving entity).

30. Linden states that, if any of its affiliates are allocated capacity on the Project, Linden's post-open solicitation filing will demonstrate that the assignment of that capacity and the corresponding treatment of unaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory. Linden further states that, in the event an affiliate is awarded transmission service on the Project, Linden will maintain separate books and records that will be made available to the Commission in accordance with the Commission's regulations. Linden also commits to comply with the Commission's Standards of Conduct, other affiliate rules, and all applicable filing requirements.[52] In addition, Linden states that it will continue to file electric quarterly reports of its transactions. Linden contends that these commitments are consistent with prior Commission decisions regarding negotiated rate authority applicable to merchant transmission facilities.[53]

2. Commission Determination

31. We acknowledge Linden's commitment that it will have an independent evaluator oversee each open solicitation process, and that it will offer all rates, terms, and conditions that its offers to anchor customers to participants in future open solicitations for any remaining capacity. Moreover, we acknowledge Linden's commitment that, if any of its affiliates are allocated capacity on the Project, Linden will demonstrate in its post-open solicitation filing that the assignment of that capacity and the corresponding treatment of unaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory. To the extent that any of Linden's affiliates are allocated capacity on the Project, Linden also commits to maintain separate books and records that will be made available to the Commission in accordance with the Commission's regulations; comply with the Commission's Standards of Conduct, other affiliate rules, and all applicable filing requirements; and to file electric quarterly reports of its transactions. These commitments will help to ensure that all transactions are transparent.

32. We accept these commitments as addressing our affiliate preference concerns, subject to the Commission's approval of Linden's compliance filing demonstrating that the assignment of capacity to any affiliate and the corresponding treatment of

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[52] *Id.* at 20 (citing *Standards of Conduct for Transmission Providers*, 129 FERC ¶ 61,043 (2009)).

[53] *Id.* (citing *Southern Cross Transmission LLC*, 157 FERC ¶ 61,090, at P 30 (2016) (accepting Southern Cross's commitments to: (i) comply with all applicable affiliate rules and the Standards of Conduct; (ii) designate an independent evaluator to oversee the open solicitation process; and (iii) submit post-solicitation and quarterly reports to address any affiliate preference concerns)).

nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential. This compliance filing must include sufficient detail to demonstrate that no affiliate has been afforded undue preference, especially if any affiliate is awarded transmission service on the Project.[54]

D. Factor Four: Regional Reliability and Operational Efficiency

33. To ensure regional reliability and operational efficiency, the Commission requires that any merchant transmission developer whose project is connected to an RTO or an ISO turn over operational control of its project to that regional entity. Merchant transmission projects, like cost-based transmission projects, are also subject to mandatory reliability requirements.[55] Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation (NERC) and any regional reliability council in which they are located.

1. Linden's Proposal

34. As noted above, Linden turned over the operational control of the Project to PJM in 2007, when it first went into service, and all transmission service over the Project will continue to be provided subject to the PJM Tariff. Linden adds that the Project complies will all reliability requirements, including all applicable standards issued by NERC, the Northeast Power Coordinating Council, Inc., and ReliabilityFirst. Linden notes that it also provides reliability benefits to both PJM and NYISO by relieving congestion and helping converge prices along their seams. Linden submits that, as such, the Project raises no operational or reliability concerns.[56]

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[54] We note that the Policy Statement does not preclude assignment of capacity to an affiliate, provided that the post-solicitation compliance filing provides sufficient explanation of decisions used to select and reject specific customers and provides an affirmative showing that the affiliate is not afforded undue preference. Policy Statement, 142 FERC ¶ 61,038 at PP 30, 34.

[55] *See, e.g.*, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (cross-referenced at 114 FERC ¶ 61,104), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

[56] Filing at 21.

2. <u>Commission Determination</u>

35. Linden complies with this factor as the Project will continue to be under PJM's operational control. Linden also is required to comply with all NERC and regional reliability council requirements, including all applicable requirements issued by the Northeast Power Coordinating Council, Inc., and ReliabilityFirst.

<u>The Commission orders</u>:

(A) Linden's proposed amendment to its authority to sell transmission rights on the Project at negotiated rates is hereby accepted, subject to condition, as discussed in the body of this order.

(B) Linden is hereby directed to file with the Commission a compliance filing within 30 days after the close of the open solicitation process, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)