

of costs to provide it with transmission service, including PJM’s Regional Transmission Expansion Plan (“RTEP”) project costs, while continuing to reap the benefits of using its MTF to allow its customers to deliver energy and installed capacity (“ICAP”) over its MTF to the NYISO.

I. MTFs SHOULD BE CHARGED THEIR FAIR ALLOCATION OF RTEP COSTS IF THE TRANSMISSION SERVICE THEY TAKE ALLOWS THEM TO DELIVER ENERGY AND ICAP TO NYISO.

The PJM TOs’ proposed amendments would, among other things, update the existing rate for Firm Point-to-Point Transmission Service to the Border of PJM (“Border Rate”), which has been frozen since 2004, to reflect changed circumstances, including the addition of new PJM Transmission Owners and the growth and enhancement of the PJM Transmission System. Specifically, the proposed amendments require Border Rate customers to pay their respective share of Transmission Enhancement Charges (“TECs”), which are charges for transmission facilities constructed pursuant to the PJM’s RTEP assessed under Schedule 12 of the PJM OATT. The PJM TOs explain that network customers have been cross-subsidizing external transactions because the Border Rate has not been updated to reflect these new charges.⁶ As the Long Island Power Authority (“LIPA”) notes in its protest, “[t]hese RTEP project costs are the principle source of new project costs that the PJM TOs now seek to incorporate into the Border Rate.”⁷ The proposed amendments also clarify that Point-to-Point Service to MTFs providing service to a neighboring region constitutes “service at the Border of PJM.”⁸

⁶ June 11 Filing at 2.

⁷ Docket No. ER19-2105-000, *supra*, Motion to Intervene and Protest of Long Island Power Authority (July 2, 2019), at 4, n. 6.

⁸ June 11 Filing at 11.

The PJM TOs' proposal to update the Border Rate appears intended to require MTFs that have been able to avoid their fair allocation of RTEP costs by taking service through a rate that has not been updated in many years to pay such costs. There are currently three MTFs with direct connections between PJM and the NYISO markets, the Linden VFT facility, the Neptune line between New Jersey and Long Island and the Hudson Transmission Partners ("HTP") line between New Jersey and New York City. The service secured and the rate paid by MTFs to be eligible to deliver ICAP into the NYISO markets—and, more specifically, Linden VFT's various machinations all with the aim of seeking to evade its fair allocation of costs for the transmission service it receives—have been the subject of extensive and still unresolved litigation that has now come full circle with the PJM TOs' proposal in this proceeding to update the Border Rate.

As Linden VFT itself has repeatedly recognized, service to its customers over its facility involves two paths.⁹ The first path goes between a point in PJM to the PJM side of the MTF and the second path goes between the MTF and the New York border. Initially, all three MTFs provided service to customers that utilize their facilities by securing Firm Transmission Withdrawal Rights ("TWRs") from the MTF to the New York border which were married together with firm Point-to-Point service from locations within PJM to the PJM side of the MTF. As part of holding the Firm TWRs, the MTFs contributed to paying for the cost of transmission investments on the PJM system that were necessary to serve the MTF's firm load, including RTEP costs charged pursuant to Schedule 12 of the PJM OATT. However, in an attempt to avoid incurring RTEP costs that were deemed to be accurately assigned to them as reflected by the outcome of a failed litigation strategy on their part to avoid these costs in the first instance on

⁹ Docket No. EL17-90-000, *Linden VFT, LLC v. Pub. Serv. Elect. and Gas Co. et al.*, Answer of Linden VFT, LLC (Nov. 13, 2017) at 4-5.

this point, both Linden VFT and HTP then sought to convert their Firm TWRs across Path 2 to Non-Firm TWRs, service acknowledged by them to be of a lower level so that PJM would no longer have any obligation to plan its system for their MTFs and, as a corollary, the MTFs would no longer be held responsible for RTEP transmission upgrade costs.¹⁰ In granting these proposals, the Commission specified that Linden VFT and HTP would, by definition, receive a less reliable form of service if they ultimately elected to surrender their Firm TWRs in favor of Non-Firm TWRs.¹¹

Both Linden VFT and HTP subsequently elected to surrender their Firm TWRs over the second path from their MTFs to the New York border at the beginning of 2018 and instead take Non-Firm TWRs. As the result of their actions, transmission service from these MTFs to the New York border utilizing these MTFs became non-firm.¹² As reflected in its protest filed in this proceeding, Linden VFT has been purchasing firm Point-to-Point transmission service under PJM Rate Schedule 7 at the Border Rate since that time—a rate demonstrated in the June 11 Filing to be substantially outdated.¹³ Also as a result of their actions, these MTFs avoided paying their fair share for the recent transmission investment of serving them as firm load and

¹⁰ Docket No. EL17-90-000, *supra*, Complaint (Sept. 18, 2017) (“Linden VFT Complaint”), at 18–19 (acknowledging a generator taking non-firm service (i.e., an energy only service) is only “eligible to deliver its output on an as-available basis of transmission capacity,” which means that “no upgrades for the delivery of power, the reduction of congestion or the mitigation of transmission overloads is necessary for such service,” and establishing that “[t]here simply is no dispute that conversion of TWRs from Firm to Non-Firm reduces the impact on the PJM transmission system because, as is the case with all types of firm service, Firm TWRs require PJM to plan for power withdrawal at a designated point of interconnection without regard to levels of congestion.”).

¹¹ *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264, at P 25 (2017), *settlement judge procedures established*, 164 FERC ¶ 61,034 (2018); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 43 (2017), *settlement judge procedures established*, 164 FERC ¶ 61,034 (2018).

¹² At this juncture, service over the HTP MTF remains subject to buyer side mitigation Offer Floor requirements. HTP has not elected to purchase Firm Point-to-Point transmission service.

¹³ See Linden VFT Protest at 4.

instead Linden VFT continued being treated as firm load while only paying a Point-to-Point rate that had not been updated since 2004.

Notwithstanding the significant change and non-firm nature of the service available over its second path, the NYISO has erroneously continued to permit ICAP sales to New York over the Linden VFT MTF. To correct this error, IPPNY filed a complaint with the Commission challenging the ongoing adequacy of ICAP service over the Linden VFT MTF in light of Linden VFT's decision to elect Non-Firm TWRs.¹⁴ As demonstrated in the IPPNY Complaint and its answers in the IPPNY Complaint Proceeding, service is no longer firm over the Linden VFT MTF, and thus, the NYISO erred in continuing to permit ICAP sales to be made to New York over this facility.

Important to consideration of the issues presented in this proceeding, in response to the IPPNY complaint, Linden VFT asserted that it received the same level of firm service utilizing firm Point-to-Point transmission service as the firm service provided to native load.¹⁵ Based on that fact, Linden VFT argued that it continued to meet the NYISO's eligibility requirements for its MTF to be used to deliver ICAP to New York. In so doing, Linden VFT conveniently omitted any reference to its own admissions in the earlier proceedings that moving to Non-Firm TWRs meant it would willingly be accepting a lower form of service.¹⁶ Also convenient for Linden VFT, it would subsequently be treated as firm load while no longer paying its share of the costs of transmission investment in PJM, including RTEP costs, to serve firm load.

¹⁴ Docket No. EL18-189-000, *Indep. Power Producers of N.Y. v. N.Y. Indep. Sys. Operator, Inc.*, Complaint Requesting Fast Track Processing (July 31, 2018) (the "IPPNY Complaint Proceeding" and "IPPNY Complaint," respectively).

¹⁵ Docket No. EL18-189-000, *supra*, Protest of Linden VFT, LLC (Aug. 20, 2018) at 4, 10; Docket No. EL18-189-000, *supra*, Answer of Linden VFT, LLC (Sept. 20, 2018) at 8 (asserting that MTFs with firm Point to Point transmission service, like the Linden VFT MTF, are subject to curtailment by PJM equal to load).

¹⁶ Linden VFT Complaint at 18–19.

Assuming, *arguendo*, that an MTF with Non-Firm TWRs can deliver energy and ICAP from PJM to New York using Firm Point-to-Point Border service just as it did with Firm TWRs, it would effectively mean that Linden VFT's and HTP's conversion from Firm TWRs to Non-Firm TWRs was merely a change in name of the same service. This change in service has allowed Linden VFT to avoid the RTEP costs by taking the Firm Point-to-Point Border service at a Border Rate that has been frozen since 2004, long before the RTEP project costs were incurred or other major system changes took place on the PJM system. IPPNY believes, as LIPA stated in its protest, that the intent of the TOs' June 11 Filing to update the Border Rate is to ensure that MTFs that have relinquished their Firm TWRs pay their fair share of RTEP and other costs.¹⁷

IPPNY's Complaint remains pending before the Commission at this time. IPPNY continues to take the position that firm Point-to-Point transmission service over the first path is insufficient to make ICAP deliveries to New York over the Linden VFT MTF. However, should, *arguendo*, an MTF without Firm TWRs be permitted to deliver ICAP to New York based on paying a firm Point-to-Point rate at the Border, the Commission must, at a minimum, require that the MTF pay its fair share of RTEP and other costs as it would pay if it had Firm TWRs.

II. LINDEN VFT'S ARGUMENTS THAT IT SHOULD CONTINUE TO AVOID ITS FAIR ALLOCATION OF RTEP COSTS ARE WITHOUT MERIT.

A. The Commission Should Reject Linden VFT's Argument That It Should Not Be Charged RTEP Costs Because the Border Rate Service It Takes Is A Lower Level Service Than Native Load Service.

In its protest, Linden VFT once again seeks to evade incurring transmission service costs for firm service to serve its firm load. Specifically, having argued in the IPPNY Complaint Proceeding that firm Point-to-Point transmission service was adequate to permit ICAP deliveries

¹⁷ While IPPNY supports modifying the PJM OATT to ensure that MTFs are fairly and appropriately allocated RTEP costs, IPPNY takes no position on whether the specific proposals in the June 11 Filing achieve this.

to NYISO because it was equivalent to the firm service provided to PJM native load customers, Linden VFT now shifts gears and asserts that native load service “is unquestionably more valuable than firm point-to-point service” because it is more flexible, only one customer is currently taking service over its facility and the low voltage system is not currently being accessed in conjunction with the use of its facility.¹⁸ On these bases, Linden VFT argues that the Border Rate should not be updated to incorporate the RTEP and other system costs that comprise the 2019 revenue requirements of the PJM system.

Initially, it must be noted that, while Linden VFT may have one customer using its MTF at this time, the identities and geographic locations of its customers can certainly change over time. The Border Rate must be robust enough to ensure that the associated transmission service is priced to adequately account for such changes.

Moreover, in a series of proceedings, Linden VFT unjustifiably but deftly has sought to avoid incurring legitimate costs for using the PJM system to serve its firm load and export ICAP from PJM to NYISO. First, when the costs attributed to its Firm TWRs were adjusted upward to account for new transmission upgrades associate with RTEP projects, Linden VFT voluntarily surrendered those rights and went forward paying a lower Border Rate for firm Point-to-Point transmission service in lieu of continuing to pay for its Firm TWRs. When IPPNY challenged its eligibility to continue to sell ICAP to New York because Linden VFT had relinquished its Firm TWRs, Linden VFT argued its MTF received firm service equivalent to the service provided to native load customers and therefore could continue to deliver ICAP to NYISO. Now that the PJM TOs have justifiably sought to update the Border Rate to reflect the changes to the PJM system over the past 15 years, Linden VFT attempts to differentiate the transmission service it is

¹⁸ Linden VFT Protest at 12.

receiving. Linden VFT, however, cannot have it both ways. To receive a firm service that is equivalent to the firm service provided to native load customers, it must be required to incur the associated costs, updated to reflect 2019 system conditions.

B. The Commission Should Reject Linden VFT’s Argument That The Proposed Updated Border Rate Will Harm Its Business.

Linden VFT argues that the PJM TOs’ proposal to update the Border Rate to reflect the revenue requirement for the PJM system in 2019, not 2004, “would result in Linden VFT being charged approximately \$16 million per year in Border Rate charges, which is simply untenable, given Linden VFT’s financial profile.”¹⁹ Per Linden VFT, the “rate shock” from increasing its annual charge from approximately \$6 million to this new level will cause it to “either become insolvent or be forced to fundamentally change its business model.”²⁰ Here too, Linden VFT’s claims lack merit.

Linden VFT received Commission authorization to surrender its Firm TWRs at the beginning of 2018. Thus, its current business model utilizing firm Point-to-Point transmission service at the Border Rate has only been in place for less than year and a half. Moreover, as reflected in the June 11 Filing, Linden VFT has been on notice over essentially that entire period of time that the PJM TOs were reviewing the adequacy of the existing Border Rate.²¹ In addition, while Linden VFT suggests that updating the Border Rate to reflect the existing revenue requirement for the PJM system will lead to MTFs subsidizing native load customers, the facts appear to reveal that Linden VFT has it backwards. By paying a rate that does not

¹⁹ See Linden VFT Protest at 15.

²⁰ *Id.*; see also *id.* at 3 (reporting that an updated Border Rate to reflect existing revenue requirements on the PJM system would mean its financial situation would “becom[e] even more dire.”).

²¹ See June 11 Filing at 6 & n.27 (highlighting, in February 2018, the PJM TOs had notified the Commission that they were reviewing the structure of this rate).

reflect the addition of Transmission Owners to the PJM footprint or growth and enhancements made since 2004, it is actually PJM native load customers who have been subsidizing the MTFs that provide service to a neighboring region and will continue to do so absent action by the Commission to correct this inequity. As IPPNY established in the IPPNY Complaint Proceeding, permitting ICAP sales over the Linden VFT to New York is artificially increasing ICAP prices in PJM to the detriment of PJM consumers.²² Failing to charge the MTFs a rate that reflects the cost of transmission service further harms PJM consumers by forcing them to pay artificially higher transmission service costs.

As a merchant participant in the competitive wholesale electric markets, Linden VFT agreed to bear the risk that its business model may not prove to be viable. Indeed, arbitrarily limiting Linden VFT's transmission service costs will force other native load customers to pay more for services from which Linden VFT is using and benefitting. In addition, failing to charge Linden VFT its appropriate firm transmission costs will artificially suppress ICAP prices in New York to the detriment of suppliers that may otherwise be economic or that should be receiving a higher payment reflective of the value of ICAP on the New York system. The fact that Linden VFT's MTF may ultimately be uneconomic under current market conditions simply means that other entities should provide ICAP to New York until such time that the price rises to a level that permits Linden VFT to pay its transmission service costs and provide ICAP over its MTF to New York.

²² IPPNY Complaint at 20.

C. The Commission Should Reject Linden VFT’s Argument That The Border Rate Should Be Eliminated.

In addition to challenging whether the PJM TOs should be permitted to update the Border Rate so that it may reflect the existing revenue requirements of the PJM system, Linden VFT also takes the more extreme position that the Border Rate should be eliminated altogether.²³ Pointing to the fact that the Commission has previously focused on seams between regions, Linden VFT first argues that “the Border Rate creates an inefficiency in the wholesale electricity marketplace by imposing a barrier on the most efficient flow of energy and capacity between RTOs.”²⁴ Linden VFT further suggests that the fact that the Commission permitted NYISO and PJM to engage in the Operational Base Flow (“OBF”) operating practice and to supply 400 MW of energy to each other depending on system conditions also supports eliminating the Border Rate. Both arguments are red herrings.

While it is true that the Commission previously has focused on the elimination of through and out charges to prevent transactions from incurring a double payment (once in the region being exited and again in the region being entered), this issue is not implicated by the ICAP service in question between PJM and New York. Entities taking firm Point-to-Point transmission service are *modeled as loads* in PJM planning studies. In any event, border charges are assigned to energy transfers which can occur over the Linden VFT MTF when they are economic based on their bids and can be accommodated by the system. ICAP sales are not required to permit such transactions. Thus, rather than being an administrative fee tied to the sale of energy, the Border Rate under PJM Rate Schedule 7 that MTFs are charged reflects the costs to provide transmission service.

²³ Linden VFT Protest at 13.

²⁴ *Id.*

Likewise, the OBF operating practice highlighted by Linden VFT was developed by PJM and the NYISO to address short-term system conditions pending completion of selected transmission upgrades on the PJM system. It was expressly designed to meet operating needs and allow the two systems to operate more efficiently. Again, unlike firm Point-to-Point transmission service, it was not a component that was an integral part of the overall PJM system plan.

In short, the bases for both considerations raised by Linden VFT are fundamentally different than the reason MTFs using Point-to-Point transmission service to provide service to a neighboring region are charged the Border Rate. Accordingly, here, too, Linden VFT's arguments should be rejected.

III. CONCLUSION

For the foregoing reasons, the Commission should reject Linden VFT's arguments supporting its continuing attempts to escape its fair share of RTEP costs while continuing to derive the benefits of allowing its customers to deliver energy and ICAP over its MTF to the NYISO.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

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Dated: July 19, 2019