

125 FERC ¶ 61,286  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Invenergy Cannon Falls LLC

Docket Nos. ER08-1333-000  
ER08-1333-001

ORDER ACCEPTING PROPOSED RATE SCHEDULE

(Issued December 12, 2008)

1. On July 31, 2008, Invenergy Cannon Falls LLC (Invenergy)<sup>1</sup> submitted for filing, pursuant to section 205 of the Federal Power Act,<sup>2</sup> a proposed rate schedule for supplying Reactive Supply and Voltage Control from Generation Sources Service (reactive power) to the Midwest Independent Transmission System Operator Inc. (Midwest ISO). For the reasons discussed below, we accept the proposed rate schedule for filing, effective August 1, 2008, as requested.

**I. Background**

2. The proposed rate schedule specifies Invenergy's cost-based revenue requirement for providing reactive power from its 394 MW natural gas-fired electric generating facility in Cannon Falls, Minnesota (Cannon Falls Facility).<sup>3</sup> The Cannon Falls Facility

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<sup>1</sup> Invenergy is a Delaware limited liability company and an indirect, wholly-owned subsidiary of Invenergy Investment Company LLC, which, in turn, is a wholly-owned subsidiary of Polsky Energy Investments LLC. Invenergy is authorized to make wholesale power sales at market-based rates. *Invenergy Cannon Falls LLC*, Docket No. ER07-277-000 (Jan. 5, 2007) (unpublished letter order).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> The facility is an exempt wholesale generator under the Public Utility Holding Company Act of 2005 and the Commission's regulations. *See Invenergy Cannon Falls LLC*, 111 FERC ¶ 62,046 (2005).

opened in April 2008 and is interconnected with the transmission system owned by Northern States Power Company (Northern States), an affiliate of Xcel Energy Services Inc. (Xcel), and under the operational control of the Midwest ISO.

3. Invenergy states that its revenue requirement consists of a single component: a Fixed Capability Component calculated pursuant to the *AEP Methodology*<sup>4</sup> and designed to recover the portion of plant fixed costs attributable to reactive power production capability.<sup>5</sup> Invenergy claims that its rate schedule is consistent with Schedule 2 of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (Tariff), which allows generators to collect a cost-based revenue requirement based on their capability to produce reactive power, and with Commission precedent requiring all generators seeking to recover a reactive power revenue requirement based on actual cost data to use the *AEP Methodology*. Invenergy states that the Commission has consistently accepted reactive power revenue requirements based on the *AEP* methodology without hearing or modification.<sup>6</sup>

4. Invenergy states that it has followed Commission precedent and used a levelized annual carrying cost approach to develop the capital cost component of the annual revenue requirement.<sup>7</sup> Invenergy also states that its use of a proxy rate of return on equity is consistent with the Commission's findings in *New England Power Pool*, 92 FERC ¶ 61,020, at 61,041 (2000). Additionally, Invenergy states that it has based its Operation and Maintenance and Administrative and General costs on budgeted expenses because its plant has been in operation for less than a year. Invenergy requests that its proposed rate schedule be accepted to become effective August 1, 2008.

5. On September 26, 2008, Commission staff issued a letter finding Invenergy's filing deficient and directing Invenergy to provide further information. In response,

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<sup>4</sup> See *American Elec. Power Serv. Corp.*, 88 FERC ¶ 61,141 (1999) (*AEP*).

<sup>5</sup> Invenergy states that it is not seeking recovery of two other components of a reactive power revenue requirement that may be included in reactive power tariff filings. The omitted components are: (1) increased generator and step-up transformer heating losses that result from the production of reactive power; and (2) lost opportunity costs in the event the Facility is directed to modify its energy output to produce additional reactive power. Invenergy Filing at n.7. Invenergy does not waive seeking recovery of these cost components in a future filing. *Id.*

<sup>6</sup> See, e.g., *FPL Energy Marcus Hook, L.P.*, 110 FERC ¶ 61,087, at P 16 (2005).

<sup>7</sup> See, e.g., *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090, at P 6-7 (2003).

Invenergy filed supplemental testimony addressing the issues raised in the deficiency letter.

### **Notice of Filing and Responsive Pleadings**

6. Notice of Invenergy's initial filing was published in the *Federal Register*, 73 Fed. Reg. 46,621 (2008), with comments and interventions due on or before August 21, 2008. Notice of Invenergy's deficiency response was published in the *Federal Register*, 73 Fed. Reg. 63,956 (2008), with comments and interventions due on or before November 5, 2008.

7. Timely motions to intervene were filed by the Midwest ISO and Great River Energy.<sup>8</sup> Xcel filed a timely motion to intervene and protest. Invenergy filed an answer to Xcel's protest and Xcel filed an answer to the answer.

### **Xcel's Protest**

8. Xcel argues that Invenergy's rate schedule would infringe on the rights of Xcel's affiliate, Northern States, under Northern States' replacement power purchase agreement with Invenergy. Xcel acknowledges that the power purchase agreement does not address reactive power expressly, but claims that it obligates Invenergy to supply and sell the full capacity and energy output from the Cannon Falls Facility to Northern States. Xcel claims that it is implicit in the structure and spirit of the agreement that Northern States has rights to all real and reactive power generated by the facility. Xcel claims that production of reactive power can adversely impact the facility's energy production.

9. Xcel further claims that Northern States supplies natural gas fuel to the facility and, therefore, will bear the costs of fuel and related efficiency effects required to produce reactive power under Invenergy's proposed tariff. Xcel speculates that Invenergy does not seek recovery of heating losses or opportunity costs because these costs will be borne primarily by Northern States, since Northern States' scheduled power will be subject to increased heating losses, Northern States bears fuel costs, and Northern States bears opportunity costs when the facility's output is changed to accommodate reactive power needs. Finally, Xcel argues that the Commission should suspend the proposed rates for five months.

### **Invenergy's Answer**

10. Invenergy disputes Xcel's contention that it is already paying for this service through its full requirements service contract. Invenergy maintains that the services to be

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<sup>8</sup> These interventions raised no substantive issues.

provided under the new rate schedule are not the same as those already contracted for, which will still be provided to Xcel under the power purchase agreement. Invenergy states that the reactive power service covered in its proposed rate schedule is expressly contemplated in the Interconnection Agreement among Invenergy, Northern States, and the Midwest ISO. In addition, Invenergy argues that Xcel's protest gives no reason for imposing a five-month suspension period and fails to show that the proposed rate is unjust, unreasonable, or inconsistent with the power purchase agreement.

11. Invenergy explains that generators are sized to produce both real and reactive power capacity, and that the facility has been designed to be capable of producing the levels of reactive power specified in the Interconnection Agreement. Invenergy asserts that the facility is sized to support both the contract capacity under the power purchase agreement and the separate reactive supply service under the Interconnection Agreement. Invenergy asserts that the heating losses and opportunity costs for which it is not seeking recovery are *de minimis* in amount and, as Invenergy is obligated to provide reactive power to the Midwest ISO under the Interconnection Agreement, these costs will be incurred regardless of whether Invenergy is compensated for them.

### **Xcel's Answer**

12. Xcel argues that its protest showed that Invenergy's proposed reactive power rates are unjust, unreasonable, and inconsistent with the power purchase agreement and presented material questions of fact that warrant a hearing.

### **Deficiency Letter Response**

13. In response to staff's deficiency letter, Invenergy provides technical details of the facility's capability. These details include the reactive capability curve for the generator, which demonstrates that the facility can provide the full range of reactive power required by the Interconnection Agreement and covered by the proposed tariff without reducing its real power output from the amount specified in the power purchase agreement. Invenergy's response also notes that there have been no instances in which the facility has had to back down real power production in order to produce more reactive power.

## **II. Discussion**

### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise

ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

**B. Contractual Provisions**

16. Xcel relies on three provisions of the power purchase agreement to support its argument that Invenergy is contractually obligated to provide Northern States with reactive power as part of Northern States' full requirements contract. First, Xcel points to section 6.1 of the power purchase agreement, which provides that:

Seller shall supply from the Facility and sell to [Northern States], and [Northern States] shall receive and purchase, the Contract Capacity and Contract Energy, as specified in Article 7 of this [power purchase agreement]. Seller shall deliver the Contract Capacity and Contract Energy to, and make such capacity and energy available for dispatch and receipt by [Northern States] at, the Point of Delivery. To the extent the Facility is available to operate, all of the Contract Capacity and Contract Energy shall be made available for delivery to the Point of Delivery and receipt by [Northern States] as dispatched by [Northern States] under this [power purchase agreement].

17. Second, Xcel notes that the term "Contract Capacity" is defined in section 7.1 of the power purchase agreement as follows:

The Contract Capacity provided and sold by Seller and purchased by [Northern States] hereunder shall be all of the capacity available at any time from the Facility at the Point of Delivery, not to exceed the Net Capability. The Contract Capacity purchased by [Northern States] shall include any and all uncommitted and undispached Accreditable Capacity available from the Facility, which in combination with the Accreditable Capacity that has been committed and dispatched by [Northern States] hereunder shall not exceed the Net Capability.<sup>[9]</sup>

18. Finally, Xcel notes that the power purchase agreement defines the term "Contract Energy" as follows:

The Contract Energy provided by Seller and received by [Northern States] hereunder shall be the metered, net energy output generated by the Contract Capacity as delivered and adjusted for losses to the Point of Delivery; less any such energy which has not been dispatched by [Northern States] . . . .

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<sup>9</sup> Xcel states that Net Capability is defined as 357,000 kW. Xcel Protest at n.6.

19. Although it is without dispute that these provisions obligate Invenergy to provide Northern States with Contract Capacity and Contract Energy, it is unclear whether the definitions of “Contract Capacity” and “Contract Energy” include reactive power. Given this ambiguity, we find it telling that the power purchase agreement’s definitions of Contract Capacity and Contract Energy do not refer to reactive power. We interpret this silence as an indication that the parties did not intend the definitions of Contract Capacity and Contract Energy to include reactive power.<sup>10</sup>

20. Our interpretation of the power purchase agreement is consistent with our long-standing approach to reactive power, which treats it as an ancillary service distinguishable from real power. The Commission has explained that:

Electric power consists of two components. The first component, “real” power (expressed in terms of watts), is the active force that causes electrical equipment to perform work. The second component, “reactive” power, (expressed in terms of volt-amperes reactive (VARs)) is necessary to maintain adequate voltages so that “real” power can be transmitted.<sup>[11]</sup>

Consistent with this distinction, the Commission treats reactive power as an ancillary service that must be unbundled from basic transmission service and offered separately from a standard power sale.<sup>12</sup> Thus, the Commission treats reactive power as a distinct service separate and apart from the real power that is sold to serve load. Xcel’s claim that the power purchase agreement implicitly covers reactive power ignores these subtleties and would require the Commission to read into the power purchase agreement an implied obligation that is inconsistent with the Commission’s long-standing expressed practice of treating reactive power as a separate and distinct service. Rather than strain the language

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<sup>10</sup> See *Consolidated Gas Supply Corp. v. FERC*, 745 F.2d 281, 291 (4th Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985) (“It is a reasonable interpretation device to conclude that what someone has not said, someone has not meant.”); *Mobil Oil Corp. v. FPC*, 570 F.2d 1021, 1025 (D.C. Cir. 1978) (citing *Texas Gas Transmission Corp. v. FPC*, 441 F.2d 1392, 1396 (6th Cir. 1971), approvingly for proposition that in contract law, silence should not be interpreted as indicating agreement between the parties).

<sup>11</sup> *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 at P 28-29, *order on reh’g*, 121 FERC ¶ 61,196 (2007) (original footnote omitted).

<sup>12</sup> See *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-A, FERC Stats. & Regs. ¶ 31,048 at 30,226-28 (1997).

of the power purchase agreement to read in what the parties have left out, we choose to interpret the power purchase agreement's silence with respect to reactive power in the manner most consistent with the Commission's approach to reactive power. The parties easily could have expressly included reactive power as a service to be provided by the power purchase agreement. We are unwilling to ascribe such motives to the parties in the absence of express language specifically stating such a requirement.

21. Moreover, our finding that the power purchase agreement does not implicitly cover reactive power draws additional support from the clarity and sophistication with which Xcel handled reactive power purchases in the power purchase agreement between its affiliate, Southwestern Public Service Company (Southwestern), and Lea Power Partners.<sup>13</sup> In that power purchase agreement, Xcel and Southwestern expressly acknowledged the distinct status of reactive power by including a separate provision governing its sale.<sup>14</sup> This provision references two of the issues typically associated with reactive power and reactive power compensation: (1) the role that "free-standing agreements," such as an Interconnection Agreement, play in determining the entirety of the parties' bargain with respect to reactive power; and (2) the concepts of fixed and variable reactive power costs. The Southwestern – Lea Partners agreement stands in marked contrast to the Invenergy-Northern States power purchase agreement, which does

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<sup>13</sup> The power purchase agreement between Invenergy and Northern States was executed on April 1, 2005. The power purchase agreement between Southwestern and Lea Power Partners was executed on October 20, 2006.

<sup>14</sup> The provision states:

The Parties recognize that, although Seller's obligation to provide reactive power service from the Facility to the Interconnection Provider's System and any compensation Seller receives for such reactive power service are to be set forth in a free-standing agreement(s) separate from this [power purchase agreement], the compensation that Seller receives from [Southwestern] under this [power purchase agreement] includes full compensation for Seller's fixed and variable costs for providing such reactive power service. Therefore, Seller shall credit [Southwestern] as an offset to Seller's monthly invoice for provision of reactive power service from the Facility during the Term. Such credit shall differentiate, if possible, between compensation for the fixed costs and the variable costs of providing reactive power service.

not specifically or directly address reactive power and which does not contain provisions anticipating issues that often arise when addressing reactive power compensation.

22. We find that the Southwestern-Lea Power Partners power purchase agreement is evidence that Xcel and its affiliates are sophisticated parties capable of understanding the complexities of the reactive power issue and the nuances of the Commission's policy on this issue; moreover, it demonstrates that Xcel is fully aware of how to draft provisions specifically dealing with the purchase of reactive power in power purchase agreements. As Xcel acknowledges, there is no similar provision in the Invenergy-Northern States power purchase agreement. Consequently, we agree with Invenergy that this provision undercuts Xcel's claim that the Invenergy-Northern States power purchase agreement covers reactive power.

23. Finally, our finding that the power purchase agreement does not cover reactive power is supported by the terms of the Interconnection Agreement between Invenergy, Northern States and the Midwest ISO. Section 9.6.3 of the Interconnection Agreement contemplates that Invenergy will be paid reactive power compensation pursuant to any tariff or rate schedule filed by the Transmission Provider and approved by the Commission.<sup>15</sup> This provision makes no sense if we accept Xcel's claim that the power purchase agreement already provides for reactive power compensation and precludes Invenergy from seeking compensation under Schedule 2 of the Midwest ISO's Tariff. We take this provision as further evidence that the power purchase agreement did not contemplate Invenergy providing the Midwest ISO and Northern States with reactive power without additional compensation.

24. For these reasons, we conclude that, while Northern States is entitled to Invenergy's entire real power output, it is not entitled to Invenergy's reactive power output, as this is not real power and is not covered by the power purchase agreement.

25. Additionally, we reject Xcel's argument that Invenergy's production of reactive power can adversely impact its energy production. Under the Interconnection Agreement, Invenergy is required to meet all of the Midwest ISO's reactive power requirements within a prescribed bandwidth. Given Invenergy's resources, as detailed in its response to the staff's deficiency letter, we can envision no conceivable instance where Northern States would not obtain the full amount of power that it has contracted for with Invenergy. The power purchase agreement states that the net capability of the facility is 357 MW, and that the capacity provided by Invenergy and purchased by

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<sup>15</sup> Section 9.6.3 of the Interconnection Agreement provides that:

Payments for reactive power shall be pursuant to any tariff or rate schedule filed by the Transmission Provider and approved by the [Commission].

Northern States shall be all of the capacity, not to exceed net capability.<sup>16</sup> Invenergy explains that to provide 357 MW at the point of delivery, the facility needs to produce 360.4 MW at the generator terminals (180.2 MW per generator). Invenergy states that the facility can supply 360.4 MW of real power for a range from 0.887 lagging power factor (94 Mvar per generator) to 0.932 leading power factor (70 Mvar per generator), and provides technical specifications of the generators.<sup>17</sup> This range is larger than the range required in the Interconnection Agreement (0.95 lagging to 0.95 leading power factor).<sup>18</sup> Invenergy further states that there are no instances where the facility has had to back down real power production in order to produce more reactive power.<sup>19</sup> There will be no need for Invenergy to reduce its real power output from the Cannon Falls Facility to produce reactive power because Invenergy's resources are sufficient to meet the needs of both Northern States' and Invenergy's obligations in its Interconnection Agreement with Northern States and the Midwest ISO.

### C. Proposed Rate Methodology

26. Based on our review of Invenergy's proposed rate schedule and supporting information, we find that Invenergy has followed the methodology prescribed in *AEP* and that its proposed rate schedule appears to be just and reasonable and not unduly discriminatory. Moreover, notwithstanding Xcel's arguments to the contrary, there are no material issues of fact that warrant an evidentiary hearing. Thus, we accept Invenergy's proposed rate schedule for filing, effective August 1, 2008, as requested.

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<sup>16</sup> Power Purchase Agreement § 3.4 and § 7.1

<sup>17</sup> Invenergy Deficiency Letter Response at 3 (Question 4) and Schedule 5, October 17, 2008.

<sup>18</sup> Interconnection Agreement § 9.6.1. (Attachment A to Invenergy Answer).

<sup>19</sup> Invenergy Deficiency Letter Response at 3 (Question 5).

The Commission orders:

Invenergy's proposed rate schedule for reactive power is hereby accepted for filing, effective August 1, 2008, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.