

ORIGINAL



0000128274

1 Douglas V. Fant
2 Law Offices of Douglas V. Fant
3 3655 W. Anthem Way
4 Suite A-109, PMB 411
5 Anthem, AZ. 85086

RECEIVED

2011 AUG 12 P 12: 16

6
7 Attorney for Invenergy Wind Development LLC

AZ CORP COMMISSION
DOCKET CONTROL

8
9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10
11 COMMISSIONERS

Arizona Corporation Commission
DOCKETED

12
13 GARY PIERCE, Chairman
14 PAUL NEWMAN
15 SANDRA D. KENNEDY
16 BOB STUMP
17 BRENDA BURNS

AUG 12 2011

DOCKETED BY

18
19
20 IN THE MATTER OF THE APPLICATION OF
21 NAVOPACHE ELECTRIC COOPERATIVE, INC.
22 FOR A DETERMINATION OF THE FAIR
23 VALUE OF ITS PROPERTY FOR RATEMAKING
24 PURPOSES, TO FIX A JUST AND REASON-
25 ABLE RETURN THEREON AND TO APPROVE
26 RATES DESIGNED TO DEVELOP SUCH
27 RETURN.

DOCKET NO. E-01787A-11-0186

**REPLY TO NAVOPACHE
ELECTRIC COOPERATIVE'S
MOTION IN OPPOSITION TO
INTERVENTION OF
INVENERGY WIND DEVEL-
OPMENT LLC**

28
29
30
31
32 Pursuant to the Rules of Practice and Procedure of the Arizona Corporation
33 Commission ("Commission"), Invenergy Wind Development LLC ("Invenergy") hereby
34 files a reply to Navopache Electric Cooperative Inc.'s Opposition To Intervention Of
35 Invenergy Wind Development, LLC ("Invenergy") on the grounds that elements of the
36 proposed Navopache Electric Cooperative ("Navopache") tariff revisions directly and
37 substantially impact the ability of Invenergy to site and develop a wind farm generation
38 project in Navopache's service area in eastern Arizona.

1 First Navopache has proposed a Schedule No. 12 in which Navopache seeks to
2 establish a wheeling rate for sub-transmission service through the Navopache system.
3 Output from Invenergy's proposed wind farm will be subject to that rate schedule if
4 Invenergy seeks to wheel the output across the Navopache system for delivery to
5 potential third-party customers.

6 However the current proposed Schedule No. 12, in the section on "Losses",
7 authorizes Navopache unilaterally to calculate and assess open-ended loss charges against
8 third parties who wheel across Navopache's transmission or distribution system. The
9 open-ended loss charges proposed by Navopache, if approved, would significantly inhibit
10 and directly affect Invenergy's ability to plan, site, construct, and operate any wind farm
11 which would wheel through the Navopache system.

12 Next A.R.S. §40-332.B requires a public service corporation such as
13 Navopache to allow a "self-generator of electricity access to electric transmission service
14 and electric distribution service under rates and terms....approved by regulatory agencies
15 that have jurisdiction over electric transmission service and electric distribution service".
16 Id. Logically, the above statutory language requires Navopache to develop and include
17 provisions within its tariff, subject to Commission review and approval, which make
18 standard interconnection procedures and in-State transmission service generally
19 available to third-party generators who locate within the Navopache service territory and
20 who request such service. Navopache rejects this interpretation and in-turn suggests that
21 it is only required to accommodate "self generators" as that term is defined in the
22 Resource Planning Rules.

1 In the December 2010 Commission decision which approved the Resource
2 Planning Rules, the Commission staff did not cite either of the utility-related definitional
3 sections in A.R.S. §40-201 or A.R.S. §30-801, or the provision in question, A.R.S. §40-
4 332, as a reference or authority for publication of the Resource Planning Rules. Hence,
5 Navopache's reference to the Resource Planning Rules in an effort to clarify the
6 definition of self-generator in A.R.S. §40-332.B. is inapt. See page eight, footnote 8 in
7 *The Matter of the Notice of Proposed Rulemaking Regarding Resource Planning*,
8 Arizona Corporation Commission Decision No. 71722, dated December 3, 2010, Docket
9 No. RE-00000A-09-0249.

10 Invenergy is actively seeking to develop a wind generation project in eastern
11 Arizona. The project will help satisfy the demand for renewable energy stimulated by the
12 Commission's establishment of its Renewable Energy Standard & Tariff ("REST")
13 standard. See A.A.C. R14-2-1801 et seq.

14 As stated in the Commission's final Finding of Fact in the decision establishing
15 the REST: "[p]romulgation of the Proposed RES Rules as set forth in Appendix A is just,
16 reasonable, proper, and necessary in order to promote and safeguard the security,
17 convenience, health and safety of Affected Utilities' customers and the public in
18 Arizona". Finding of Fact No. 243 in *The Matter of the Proposed Rulemaking For the*
19 *Renewable Energy Standard and Tariff Rules*, May 23 and June 6, 2006, Commission
20 Decision No. 69127, Docket No. RE-00000C-05-0030.

21 It would be inappropriate to adopt an unduly restrictive and unsubstantiated
22 definition of the term "self-generator" contained in A.R.S. §40-334.B and thereby

1 actively undercut Invenergy's efforts to site and build a new project which helps to
2 satisfy the REST requirements.

3 However, even assuming Navopache's reference to the Resource Planning Rules
4 was correct, , Invenergy's proposed generation project would still satisfy Navopache's
5 more restricted suggested definition of a "self-generator" under A.R.S. 40-334.B. That is
6 because many self-generators produce more electricity than is required onsite, and then
7 sell that extra electricity into the grid. Even under Navopache's interpretation, Title 40,
8 Subsection 334.B. still requires Navopache to publish interconnection and transmission
9 service standards to accommodate generators who wheel across the Navopache system.

10 Finally, Navopache's reference to Federal Energy Regulatory Commission
11 ("FERC") issues is purely speculative and is meant to detract from the primary reason for
12 Invenergy's petition to intervene into this case¹. Invenergy seeks to develop an up to
13 70MW wind generation project in eastern Arizona in order to respond to Arizona-based
14 customers' requirements for renewable energy. Invenergy approached Navopache last
15 year about filing an interconnection application for such a project. Navopache stated that
16 they had no interconnection standards in their tariff which would accommodate
17 Invenergy's straightforward interconnection request. Navopache then requested that
18 Invenergy file an interconnection application but utilizing the application on Navopache's
19 existing Distributed Generation interconnection form.

20 Invenergy complied and filed the completed DG interconnection form with
21 Navopache on October 2, 2010, ten months ago. Navopache has since taken no action

¹ In fact the language of subsection A.R.S. §40-334.B. anticipates FERC's possible involvement in transmission issues by referencing not only the Commission as the only relevant regulatory agency but by stating that "rates and terms and conditions of service ...[may be] determined and approved by *regulatory agencies that have jurisdiction over electric transmission service...*". (emphasis added). Id.

1 whatsoever on the application, despite regular inquiries from Invenergy. The current
2 hearing is the proper forum to require Navopache to address this gaping hole in its tariff,
3 and upgrade its proposed tariff in order to satisfy its obligations under A.R.S. §40-334.B.

4 As described above, Invenergy not only has a direct interest in the outcome of this
5 case, but there is a substantial risk that if this single legal issue is not addressed, its
6 interests may be significantly impaired. Wherefore Invenergy Wind Development LLC
7 respectfully requests that the Commission issue an order granting its Petition for Leave to
8 Intervene in the above-captioned proceeding.

9

10 Respectfully submitted this 12th day of August 2011.

11

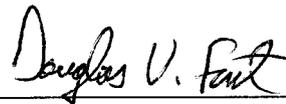
12

INVENERGY WIND DEVELOPMENT
LLC

13

14

15



16

17

Douglas V. Fant
Law Offices of Douglas V. Fant
3655 W. Anthem Way
Suite A-109 PMB 411
Anthem, AZ. 85086
Counsel for Invenergy Wind Development

18

19

20

21

22

23 LLC

24

25

26 The original and 13 copies
27 of the foregoing have been filed
28 as of August 12, 2011 with:

29

30 Docket Control

31 Arizona Corporation Commission

32 1200 W. Washington

1 Phoenix, AZ. 85007

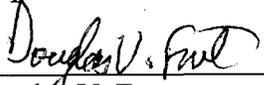
2

3 Copies of the foregoing have
4 been mailed, faxed, or trans-
5 mitted electronically as of
6 August 12, 2011 to:

7

8 All parties of record

9

10 
11 Douglas V. Fant