

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Brownsville Power I, L.L.C.	Docket Nos. ER05-850-000
Caledonia Power I, L.L.C.	ER05-851-000
Cinergy Capital & Trading, Inc.	ER05-852-000

ORDER CONDITIONALLY ACCEPTING  
MARKET-BASED RATE TARIFF REVISIONS

(Issued June 16, 2005)

1. On April 21, 2005 (April 21 filing), Brownsville Power I, LLC (Brownsville), Caledonia Power I, L.L.C. (Caledonia) and Cinergy Capital and Trade, Inc. (Cinergy Trade) (collectively, Cinergy Affiliates) submitted for filing revisions to their market-based rate tariffs. The revised tariff sheets propose to substitute a new price-index cap on sales between affiliates. In this order, we conditionally accept the proposed revisions. This order benefits customers by ensuring that the prices for sales of energy between affiliates reflect market prices.

**The Parties**

2. Brownsville and Caledonia are direct subsidiaries of Cinergy Trade, which in turn is an indirect wholly-owned subsidiary of Cinergy Corp. (Cinergy). Brownsville owns and operates a 450 MW gas-fired generating facility in Haywood County, Tennessee that is interconnected to the Tennessee Valley Authority (TVA) transmission system. Caledonia owns and operates a 444 MW gas-fired generating facility located in Lowndes County, Mississippi that also is interconnected to TVA.

3. Cinergy Trade is an Indiana corporation engaged in the business of trading and marketing wholesale electricity, among other energy products, but it does not own any generation assets. Cinergy Corp. has several utility subsidiaries that are engaged in the production, transmission, distribution and sale of electric energy at retail and the

transmission and sale of natural gas at retail in portions of Ohio, Kentucky, and Indiana.<sup>1</sup> Each of the Applicants has received Commission authorization to sell wholesale power at market-based rates; the last updated analysis was approved pursuant to delegated authority on August 12, 2003.<sup>2</sup>

### **The November 24 and February 8 Filings**

4. On November 24, 2004, as amended on February 8, 2005, Cinergy Affiliates filed revisions to their market-based rate tariffs in Docket Nos. ER05-263, 264, and 265. The November 24 filing proposed to replace the existing price cap for affiliate sales with the market-clearing prices at the Southwest Interface of PJM Interconnection, LLC (PJM). It also would have made a number of other changes to their market-based rate tariffs that would allow Cinergy Affiliates to sell additional products at the prices applicable at the PJM Southwest Interface bus. No protests were filed. Cinergy Affiliates withdrew its proposed amendments,<sup>3</sup> and instead, submitted this filing.

### **The Instant Filing**

5. In the April 21 filing, Cinergy Affiliates propose to amend their market-based rate tariffs to substitute a regional transmission organization (RTO)-maintained benchmark price cap in place of the one currently authorized for sales between affiliates, partly because, they state, the currently-authorized index is no longer reported. Cinergy Affiliates state that their existing approved market-based rate schedules allow a maximum price for sales of energy to utility affiliates at a rate capped at the “Into-Cinergy” index price as reported by *Power Markets Week*. Cinergy Affiliates state that

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<sup>1</sup> These affiliates are Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), and Union Heat, Light and Power Company (Union) (collectively, Cinergy Utilities).

<sup>2</sup> See *SCC-LI, L.L.C.*, 87 FERC ¶ 61,071 (1999) (authorizing Brownsville’s and Caledonia’s respective predecessor companies to sell wholesale power at market-based rates); *Wholesale Power Servs., Inc.*, 72 FERC ¶ 61,284 (1995) (granting market-based rate authority to Cinergy Trade’s predecessor company); *Brownsville Power I, L.L.C.*, Docket No. ER00-826-001 (August 12, 2003 unpublished letter order approving Cinergy Corp.’s most recent triennial market-based rate filing).

<sup>3</sup> See April 21, 2005 Letter from Noel Symons to Magalie Salas in Docket Nos. ER05-263, 264, and 265.

the Commission, in numerous other cases, has approved a market-indexed price cap as an adequate safeguard against the potential for affiliate abuse otherwise inherent in inter-affiliate sales.<sup>4</sup>

6. On April 1, 2005, the Midwest Independent System Operator, Inc. (Midwest ISO) began operating its energy markets, which include day-ahead and real-time markets that provide for central dispatch of wholesale electricity and transmission service in the Midwest. Cinergy Affiliates point out *Power Markets Week* has since stopped publishing the Into-Cinergy index.

### **Notice of Filings, Interventions and Protests**

7. Notice of Cinergy Affiliates' April 21 filing was published in the *Federal Register*,<sup>5</sup> with motions to intervene, comments or protests due on before May 5, 2005. None was filed.

### **Discussion**

8. Cinergy Affiliates justify using the Southwest Interface as a “superior benchmark to that set forth in Applicants’ existing tariffs” because “[it] is monitored by an independent market monitor.” Furthermore, they state that “it provides the actual market clearing price of real-time energy at the bus, rather than an approximation based upon voluntary submission of data.”<sup>6</sup> In addition, as Cinergy Affiliates state, the Into-Cinergy Index is no longer published by *Power Markets Week*.

9. Cinergy Affiliates further state that their proposal more than meets the *Edgar* standard,<sup>7</sup> and, as a robust local market benchmark that is as relevant as the Into-Cinergy Index, the PJM Southwest Interface further meets the Commission’s requirements. Cinergy Affiliates also argue that the prices at the PJM Southwest Interface are “reliable

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<sup>4</sup> See April 21 Filing at p 2, *citing Arizona Public Service Co.*, 101 FERC ¶ 61,028 at P 5 (2002).

<sup>5</sup> 70 Fed. Reg. 22,860 (2005).

<sup>6</sup> April 21 Filing at p 5.

<sup>7</sup> The *Edgar* standard of review is designed to “prevent affiliate abuse and to ensure prices that would be consistent with competitive outcomes.” See *Boston Edison Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991); see also *Southern Power Company*, 104 FERC ¶ 61,041 at P 21, 23 (2003).

and verifiable regional market benchmark trading prices,”<sup>8</sup> and therefore, the Commission should approve the substitution of this benchmark for the Into-Cinergy price caps in Cinergy Affiliates’ market-based rate tariffs.

10. While we agree with Cinergy Affiliates about the quality of the PJM Southwest Interface, we believe that because Cinergy Utilities as purchasers are located in the Midwest ISO, a Midwest ISO-based market price is the more relevant index. As we noted in *Union*,<sup>9</sup> a Day 2 Midwest ISO price<sup>10</sup> used as an index satisfies the conditions in *Edgar*.<sup>11</sup> As such, the Midwest-Cinergy Hub is a replacement comparable to the now non-existent Into Cinergy Index. Tying the price of an affiliate transaction to an established, relevant market price adequately mitigates any affiliate abuse concerns.<sup>12</sup> We note that Cinergy Utilities state in their submittal that the Midwest-Cinergy Hub would also be an appropriate substitute,<sup>13</sup> and we agree.

11. We will therefore direct Cinergy Affiliates to revise their tariffs, within 30 days of the date of this order, to reflect the use of the Midwest ISO Cinergy Hub. They must strike the language “real-time price reported at the PJM Southwest Interface as reported on the PJM website” from their tariff sheets and substitute the language “real-time price reported at the Midwest ISO Cinergy Hub.” We will also require Cinergy Affiliates to report any affiliate sales conducted between April 1 and April 22, 2005, within 30 days of the date of this order.

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<sup>8</sup> April 21 Filing at p 6.

<sup>9</sup> *Union Light, Heat, and Power Co., et. al.*, 110 FERC ¶ 61,212 (2005) (*Union*).

<sup>10</sup> Day 2 refers to the launch of the Midwest ISO energy markets on April 1, 2005.

<sup>11</sup> See *Edgar*, where we held that applicants can show that there is no affiliate preference in three ways: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers. At least one of these conditions must be met to satisfy *Edgar*.

<sup>12</sup> See, e.g., *Portland General Elec. Co.*, 96 FERC ¶ 61,093 at 61,378 (2001); *FirstEnergy Trading Servs., Inc.*, 88 FERC ¶ 61,067 at 61,156 (1999).

<sup>13</sup> Cinergy Utilities’ Application at fn 2.

12. In addition, Cinergy Affiliates' tariff sheet revisions forbid sales to their affiliated public utilities other than those covered by an existing authorization unless the Commission approves the transaction in a separate section 205 filing under the Federal Power Act (FPA).<sup>14</sup> However, the existing tariff does not state that they will not make sales to their affiliated public utility "without first receiving" Commission authorization of the transaction. Therefore, consistent with Commission precedent, the Cinergy Affiliates are directed to make a compliance filing within 30 days of the date of issuance of this order to revise their market-based rate tariffs to include such language.<sup>15</sup>

### **Waiver of Prior Notice Requirement**

13. Cinergy Affiliates request waiver of the Commission's prior notice requirement<sup>16</sup> so that they can have an effective date of April 22, 2005, one day after the filing date. Cinergy Affiliates state that good cause exists for this waiver. They also request waiver of any remaining requirements of 18 C.F.R. Part 35 to enable these amendments to take effect on the requested effective date. Cinergy Affiliates points out that the *Power Markets Week* Index that is used in the current tariff no longer exists; that this filing is ministerial in nature, as it is simply a replacement of one element in a tariff that the Commission has already approved; and that it is unlikely to be protested because it was a part of the market-based rate tariff that was proposed and not protested.

14. We will grant waiver of the 60-day prior notice requirement to permit Cinergy Affiliates' proposed tariff revisions to become effective on April 22, 2005, as requested.<sup>17</sup>

### **The Commission orders:**

(A) Cinergy Affiliates are directed to revise their tariff sheets, effective April 22, 2005, as discussed in the body of this order.

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<sup>14</sup> 16 U.S.C. § 824d(d) (2000).

<sup>15</sup> See *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002); see also *CL Power Sales One, LLC, et al.*, 111 FERC ¶ 61,251 (2005).

<sup>16</sup> See 18 C.F.R. § 35.3 (2004).

<sup>17</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

(B) Cinergy Affiliates are hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.