

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Gregory Swecker

v.

Docket No. EL05-92-003

Midland Power Cooperative

ORDER REJECTING "CLARIFICATION SUMMARY"

(Issued May 26, 2006)

1. In this order, we reject the "clarification summary" filed by Gregory Swecker in this proceeding.

Background

2. On April 24, 2006, Mr. Swecker filed what he titled a "clarification summary."¹ Mr. Swecker states that his April 24 filing is a summary of prior Commission orders addressing his requests for the Commission to initiate an enforcement proceeding against Midland Power Cooperative (Midland). Mr. Swecker characterizes the reason for making the April 24 filing as follows:

This clarification summary will be used by this complainant for enforcement of PURPA to be enforced by the state district court as outlined pursuant to the Commission orders. This complainant ask that this Commission come forth with an order within 14 days if this clarification summary is contrary to PURPA or this Commission order so that this Complainant can take the appropriate action to preserve its rights under PURPA within 30 days. This complainant will use this clarification summary as the orders for enforcement of PURPA against Midland Power Coop to be enforced in the State District Court. This Commission shall

¹ This proceeding concerns Mr. Swecker's petition to the Commission to initiate an enforcement proceeding pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 824a-3(h) (2000), against Midland Power Cooperative (Midland). *Gregory Swecker*, 114 FERC ¶ 61,205 (February 27 Order) *reconsideration denied*, 115 FERC ¶ 61,084 (April 21 Order).

notify this complainant within 14 days if the state district court is not the appropriate court for the enforcement of PURPA and to provide this complainant with the appropriate court to be used for enforcement of PURPA by this complainant.^[2]

3. On May 9, 2006, Midland filed a response to Mr. Swecker's April 24 filing and asks the Commission to deny Mr. Swecker's clarification, which Midland argues is:

nothing more than a complete misstatement as to [PURPA] and the Commission's implementing orders and regulations. While not completely clear, if the Commission does not act, Mr. Swecker will apparently contend, in a future enforcement action in state court, that the Commission has concurred with his wrong "clarification summary" of PURPA and the Commission's implementing orders and regulations.

Discussion

4. We will reject the "clarification summary." There is nothing in our rules or precedent permitting a party to a Commission proceeding to make a filing containing that party's description of Commission orders and that would bind the Commission if the Commission fails to act before a deadline determined by that party. Moreover, Commission orders speak for themselves.³ The February 27 Order, in which the Commission stated that it would not go to court on Mr. Swecker's behalf, and gave its reasons for not doing so, and the April 21 Order, denying reconsideration of the February 27 Order, sufficiently summarize that Commission's position with respect to the dispute between Mr. Swecker and Midland.

The Commission orders:

Mr. Swecker's April 24 filing is hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

² April 24 filing at 1.

³ *E.g., Indianapolis Power & Light Co.*, 48 FERC ¶ 61,040 at 61,203 & n.29, *order on reh'g*, 49 FERC ¶ 61,328 (1989).