

140 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Gerry E. Greenfield Jr. v. Benton County, Washington Docket No. EL12-78-000

NOTICE OF INTENT NOT TO ACT

(Issued August 21, 2012)

1. On June 21, 2012, Gerry E. Greenfield Jr. filed a complaint for enforcement pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 824a-3(h) (2006), against Benton County, Washington. Mr. Greenfield requests that the Commission prevent further action by Benton County with respect to the operation of the Mr. Greenfield's qualifying facility (QF) in Kennewick, WA, which consists of two 25 kW wind turbines. Mr. Greenfield asserts that Benton County has denied him due process and the benefit of the exemptions afforded by PURPA. In this regard, the Benton County District Court found Mr. Greenfield to have violated multiple zoning provisions of the Benton County Code in connection with his QF. Mr. Greenfield appealed the decision of the Benton County District Court to the Superior Court of the State of Washington. The Superior Court affirmed the decision of the Benton County District Court finding that no federal or state law preempted the Benton County Code and that Mr. Greenfield's QF violated two separate provisions of the Benton County Code.

2. Notice is hereby given that the Commission declines to initiate an enforcement action under section 210(h)(2)(A) of PURPA. Our decision not to initiate an enforcement action means that Mr. Greenfield may bring an enforcement action against Benton County in the appropriate court.

3. The Commission also finds that the actions of Benton County do not constitute a violation of PURPA or of the Commission's regulations implementing PURPA as alleged by Mr. Greenfield. Certification as a QF serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 C.F.R. Part 292.¹ Among those benefits are the exemption from certain state laws and regulations

¹ See, e.g. *DeWind Novus, LLC*, 139 FERC ¶ 61,201, at P 26 n.46 (2012) (*DeWind*); *Wyoming Wind Power, Inc.*, 34 FERC ¶ 61,152, at 61,262 n.10 (1986) (*Wyoming Wind*).

respecting “the rates of electric utilities”² and the “financial and organizational regulation of electric utilities.”³ The exemption from state laws does not relieve a facility of any other requirements of local, state, or federal law, including those regarding siting, construction, operation, licensing and pollution abatement;⁴ siting includes state zoning requirements. Nor does certification establish any property rights, resolve competing claims for a site, or authorize construction.⁵ In sum, an assertion that a QF is exempted by PURPA and the Commission’s PURPA regulation from zoning laws is without merit.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

² 18 C.F.R. § 297.602(c)(1)(i) (2012).

³ *Id.* § 297.602(c)(1)(ii).

⁴ *See, e.g. DeWind*, 139 FERC ¶ 61,201 at P 26 n.46; *Wyoming Wind*, 34 FERC ¶ 61,152 at 61,262 n.10.

⁵ *Id.*