

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ConocoPhillips Company, and
Equilon Enterprises LLC dba
Shell Oil Products US

Docket No. EL05-58-001

v.

Los Angeles Department of
Water and Power

ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued May 27, 2005)

1. On April 27, 2005, ConocoPhillips Company and Equilon Enterprises LLC dba Shell Oil Products US (Petitioners) filed a pleading styled as a request for rehearing of the Commission's Notice of Intent Not to Act issued in this proceeding on March 28, 2005.¹ In the March 28 Notice, we declined to initiate an enforcement action under section 210(h)(2)(A) of the Public Utility Regulatory Policies Act of 1978 (PURPA)² against the Los Angeles Department of Water and Power (LADWP).

¹ 110 FERC ¶ 61,368 (2005) (March 28 Notice).

² 16 U.S.C. § 824a-3 (2000).

Discussion

Procedural Matters

2. Because this proceeding arises under section 210(h) of PURPA, formal rehearing does not lie, either on a mandatory or a discretionary basis.³ Thus, while Petitioners have styled their pleading as a request for rehearing, we will treat it, in our discretion, as a request for reconsideration.

Request for Reconsideration

3. Petitioners argue that the circumstances in this proceeding are similar to the circumstances in *Gregory Swecker v. Midland Power Cooperative*,⁴ where the Commission granted a petition for enforcement under PURPA. Specifically, Petitioners point out that in *Swecker*, the Commission found that “[m]uch of this dispute has occurred because Midland, as a mostly nonregulated utility, largely implements PURPA itself.”⁵ Similarly, they argue, in this case, the Los Angeles City Council has approved the standby rates (charged by LADWP) at issue driven by the desire for greater revenues, rather than by compliance with PURPA.

4. We are not persuaded by Petitioners’ arguments. As we stated in the March 28 Notice:

While Petitioners have alleged facts that, if true, indicate LADWP’s implementation of PURPA is inconsistent with our regulations, and may constitute an abuse of its role as a “nonregulated utility,” we are not presented here with the years of litigation nor the same disproportionate financial ability of the parties to litigate a PURPA case in Federal Court that we saw in *Swecker*. We therefore will follow our more usual course of not going to court to enforce PURPA on behalf of a petitioner. This leaves Petitioners free to pursue their PURPA rights in the appropriate court.⁶

³ See *Southern California Edison Company*, 71 FERC ¶ 61,090 at 61,305 (1995); *New York State Electric & Gas Corp.*, 72 FERC ¶ 61,067 at 61,340 (1995).

⁴ 105 FERC ¶ 61,238 (2003), *order accepting settlement, terminating enforcement proceeding and dismissing request for rehearing as moot*, 108 FERC ¶ 61,268 (2004) (*Swecker*).

⁵ 105 FERC ¶ 61,238 at P 21.

⁶ March 28 Notice at n.5.

5. We reaffirm our findings in the March 28 Notice that the facts of this case do not present the years of litigation or the disproportionate financial ability to litigate that we were presented with in *Swecker*. Accordingly, we will deny Petitioners' request for reconsideration. As we pointed out in the March 28 Notice, Petitioners may bring an enforcement action against LADWP in the appropriate court.⁷

The Commission orders:

Petitioners' request for reconsideration is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁷ 110 FERC ¶ 61,368 at P 7.