

143 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gerry E. Greenfield Jr.

v.

Docket No. EL12-78-001

Benton County, Washington

ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued June 20, 2013)

1. In this order, the Commission denies Gerry E. Greenfield Jr.'s (Greenfield) request for reconsideration of the order issued on August 21, 2012¹ declining to initiate an enforcement action pursuant to section 210(h)(2)(A) of the Public Utility Regulatory Policies Act of 1978 (PURPA)² against Benton County, Washington.

2. In his petition filed on June 21, 2012, Greenfield requested that the Commission prevent any further action by Benton County relative to the operation of two 25 kW wind turbine qualifying facilities (QFs) located on his one-acre parcel. Greenfield stated that, on more than one occasion, he was charged with violating local zoning codes with respect to the operation of his two wind turbines. Greenfield noted that he previously appealed the decisions of the Benton County District Court, petitioning the Washington State Supreme Court for review, but that court affirmed those decisions. Greenfield argued that he has been denied his rights under PURPA, which the Commission should enforce.

¹ *Gerry E. Greenfield Jr. v. Benton County, Washington*, 140 FERC ¶ 61,133 (2012) (August 21 Order).

² 16 U.S.C. § 814a-3(h) (2006).

3. In its August 21 Order, the Commission opted not to initiate an enforcement action under section 210(h) of PURPA. The Commission explained that Benton County did not violate PURPA when it charged him with violating local zoning restrictions because the PURPA exemptions provided by the Commission's regulations did not include exemptions from laws "regarding siting, construction, operation, licensing and pollution abatement; siting includes state zoning requirements."³

4. On August 27, 2012, as amended on September 17, 2012, Greenfield filed a pleading styled as a request for clarification, request for rehearing and request for declaratory ruling. Greenfield reiterates that his wind turbines have been subject to scrutiny for violating Benton County zoning restrictions. Greenfield requests the Commission review the facts and circumstances surrounding the state court's decisions concerning his wind turbines, and take action under PURPA to prevent any more state charges.

5. Because this proceeding arises under section 210(h) of PURPA, formal rehearing does not lie, either on a mandatory or a discretionary basis.⁴ We, therefore, will treat Greenfield's filing as a request for reconsideration.

6. We deny the request for reconsideration. As stated in the August 21 Order, PURPA does not exempt QFs from local zoning regulations. Under section 210(h) of PURPA, the Commission has the authority and the discretion to act and enforce protections afforded to QFs, but the Commission's regulations do not exempt Greenfield's wind turbines from Benton County's local zoning restrictions. Accordingly, it was proper for the Commission to exercise its discretion and to not itself take enforcement action on Greenfield's behalf.

³ August 21 Order, 140 FERC ¶ 61,133 at P 3 (footnote omitted).

⁴ See *Southern California Edison Co.*, 71 FERC ¶ 61,090, at 61,305 (1995); *New York State Electric & Gas Corp.*, 72 FERC ¶ 61,067, at 61,340 (1995).

The Commission orders:

Greenfield's request for reconsideration is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.