

149 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Gregory and Beverly Swecker

v.

Docket Nos. EL14-9-001
QF11-424-003

Midland Power Cooperative

Gregory Swecker
and
Beverly Swecker

v.

Docket No. EL14-18-001

Midland Power Cooperative
and
Central Iowa Power Cooperative

ORDER DENYING RECONSIDERATION

(Issued December 18, 2014)

1. On May 16, 2014, Gregory and Beverly Swecker (Sweckers) filed a request for reconsideration of the Commission's May 15, 2014 "Notice of Intent Not to Act" in these proceedings.¹ In the May 15, 2014 Notice, the Commission declined to initiate enforcement actions pursuant to section 210(h)(2)(A) of Public Utility Regulatory Policies Act of 1978 (PURPA).² The Commission stated that its decision not to initiate

¹ *Gregory and Beverly Swecker v. Midland Power Cooperative*, 147 FERC ¶ 61,114 (2014) (May 15, 2014 Notice).

² 16 U.S.C. § 824a-3(h)(2)(A) (2012).

enforcement actions meant that the Sweckers could themselves bring an enforcement action or actions against Midland Power Cooperative (Midland) and/or Central Iowa Power Cooperative (CIPCO) in the appropriate court.³

2. The May 15, 2014 Notice was issued in response to two petitions filed by the Sweckers in which the Sweckers alleged, among other things, that Midland, a nonregulated electric utility,⁴ had calculated its avoided costs in a manner inconsistent with PURPA.

3. On reconsideration, the Sweckers ask the Commission to explain its rationale for not going to court on their behalf and urge the Commission to reconsider its May 15, 2014 Notice and initiate an enforcement proceeding. After filing their request for reconsideration, the Sweckers subsequently filed several additional pleadings which they claim contain new information that shows that the avoided-cost rate Midland offers to pay qualifying facilities (QF) is inconsistent with the requirements of PURPA.

4. We deny the Sweckers' request for reconsideration. Under the statute, the Sweckers have the right to petition the Commission to enforce the requirements of section 210(f) of PURPA.⁵ However, as the Commission has long recognized, its enforcement authority is discretionary.⁶ In this case, where on reconsideration the Sweckers renew contentions about Midland's avoided-cost rates that they have made in the past, and where the Commission has previously declined to itself initiate enforcement

³ 16 U.S.C. § 824a-3(h)(2)(B) (2012).

⁴ 16 U.S.C. § 2602(9) (2012).

⁵ 16 U.S.C. § 824a-3(f), (h)(2) (2012).

⁶ See *Morgantown Energy Assoc.*, 139 FERC ¶ 61,066, at P 44, *order denying reconsideration*, 140 FERC ¶ 61,223 (2012) (citing *Policy Statement Regarding the Commission's Enforcement Role under Section 210 of the Public Utilities Act of 1978*, 23 FERC ¶ 61,304, at 61,645 (1983)).

actions,⁷ the Commission will exercise its discretion and continue to decline to initiate an enforcement action.⁸

The Commission orders:

The Sweckers' request for reconsideration is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ See *Gregory R. Swecker and Beverly F. Swecker v. Midland Power Cooperative and State of Iowa*, 137 FERC ¶ 61,200 at PP 2-10 (2011), *order denying reh'g and renewing notice of intent not to act*, 142 FERC ¶ 61,207 at PP 3-13 (2013), *appeal dismissed sub nom. Midland Power Cooperative v. FERC*, No. 13-1184 (D.C. Cir. Dec. 2, 2014).

⁸ 16 U.S.C. § 824a-3(h)(2)(A), (B) (2012) (subsection (h)(2)(A) provides that the Commission “may” enforce the requirements of subsection (f), and subsection (h)(2)(B) provides that, “[i]f the Commission does not initiate an enforcement action under subparagraph (A),” the petitioner may then bring its own action in court).