

170 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Gregory and Beverly Swecker

Docket Nos. EL14-9-003
EL14-18-003
EL18-48-003

v.

Midland Power Cooperative
Central Iowa Power Cooperative

Swecker, Gregory and Beverly

QF11-424-008

ORDER DISMISSING REQUESTS

(Issued March 30, 2020)

1. On July 17, 2019, Gregory and Beverly Swecker (Sweckers) filed a request to establish the avoided cost rate for energy and capacity delivered by their facility, a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA),¹ to Midland Power Cooperative (Midland Power).² On August 8, 2019 and March 3, 2020, the Sweckers filed demands for payment based on the avoided cost rate in the July 17 Request for energy and capacity delivered by the Sweckers' QF to Midland Power.³ As discussed below, we dismiss the Sweckers' requests.

¹ 16 U.S.C. § 824a-3 (2018).

² *Gregory and Beverly Swecker*, Correspondence, Docket No. QF11-424-000 (filed July 17, 2019), (July 17 Request).

³ *Gregory and Beverly Swecker*, Correspondence, Docket No. QF11-424-008 (filed Aug. 8, 2019 and March 3, 2020). Midland Power and Central Iowa Power Cooperative (Central Iowa Power) filed responses on August 29, 2019, September 18, 2019, and March 18, 2020. The Sweckers filed answers to the responses on September 3, 2019, and September 23, 2019. On November 25, 2019, the Sweckers submitted a filing titled "Additional Information submitted to the Iowa Utilities Board." On March 18, 2020, the National Rural Electric Cooperative Association filed a response in support of Midland Power.

2. The Sweckers' arguments regarding the merits of their dispute with Midland Power and Central Iowa Power are the same arguments that the Sweckers have made in earlier proceedings, namely that they have not been paid an appropriately-determined avoided cost rate for their QF's energy and capacity. Such claims have been fully addressed in prior judicial and Commission orders.⁴ However, we take this opportunity to emphasize two points.

3. First, PURPA provides that a QF may petition the Commission to enforce the requirements of the Commission's PURPA regulations, and, if the Commission declines to initiate an enforcement action, the petitioner may then bring its own action in an appropriate United States district court.⁵ Under PURPA, entities may pursue claims in an appropriate United States district court; PURPA does not guarantee that the QF will necessarily be successful or that the QF will necessarily be entitled to relief.

4. Second, PURPA and the Commission's regulations do not authorize a QF to determine the appropriate avoided cost rate for its energy and capacity. Rather, PURPA and the Commission's regulations provide for a state regulatory authority or a non-regulated utility, as relevant, to establish in the first instance an appropriate avoided cost rate.⁶

⁴ *E.g.*, *Swecker v. Midland Power Coop.*, No. 14-2186 (8th Cir. 2015); *Swecker v. Midland Power Coop.*, 162 FERC ¶ 61,146 (2018), *reh'g denied*, 166 FERC ¶ 61,205 (2019).

⁵ 16 U.S.C. § 824a-3(h)(2) (2018). *See also Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978*, 23 FERC ¶ 61,304 (1983).

⁶ 16 U.S.C. § 824a-3; 18 C.F.R. § 292.304 (2019). *See also Tenn. Power Co.*, 77 FERC ¶ 61,125, at 61,482-83 (1996).

The Commission orders:

The Sweckers' requests are hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.