

168 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gregory and Beverly Swecker

Docket Nos. EL18-48-002

v.

Midland Power Cooperative
Central Iowa Power Cooperative

Gregory and Beverly Swecker

QF11-424-007

ORDER DENYING RECONSIDERATION

(Issued July 18, 2019)

1. On March 14, 2018, as supplemented on November 26, 2018, Gregory and Beverly Swecker (Sweckers) filed a request for rehearing¹ of the Commission's March 1, 2018 order,² which denied the Sweckers' request for clarification of the Commission's January 30, 2018 Notice of Intent Not to Act.³ For the reasons discussed below, we deny the Sweckers' request for reconsideration.

¹ As discussed below, we will treat the Sweckers' request for rehearing as a request for reconsideration.

² *Gregory and Beverly Swecker v. Midland Power Coop.*, 162 FERC ¶ 61,188 (2019) (Clarification Order).

³ *Gregory and Beverly Swecker v. Midland Power Coop.*, 162 FERC ¶ 61,072 (2018) (January 30 Notice).

(continued ...)

2. In response to a petition for enforcement filed by the Sweckers,⁴ the Commission declined to initiate its own enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA).⁵ In the January 30 Notice, the Commission stated that its decision not to initiate its own enforcement action meant that the Sweckers may themselves bring an enforcement action against Midland Power Cooperative and Central Iowa Power Cooperative in the appropriate court.

3. On January 31, 2018, the Sweckers filed a request for clarification of the January 30 Notice, seeking greater specificity concerning the significance and intent of such notices. On March 1, 2018, the Commission denied the Sweckers' request, explaining that clarification was not necessary given the wording of PURPA section 210(h)(2)(B), which provides that a qualifying small power producer may petition the Commission to enforce the requirements of the Commission's PURPA implementation regulations, and if the Commission does not initiate an enforcement action within 60 days following the date of filing of the petition, the petitioner "may bring an action in the appropriate United States district court."⁶

4. The Sweckers now seek rehearing of the Clarification Order. Because this proceeding arises under PURPA section 210(h), formal rehearing of the Clarification Order does not lie.⁷ Nonetheless, considering the Sweckers' arguments as a request for reconsideration, we are not persuaded to reach a different determination. In response to their petition for enforcement, the Commission issued a Notice of Intent Not to Act, thus allowing the Sweckers themselves to go to court. That was a permissible and an appropriate response to their petition and we are not persuaded that we erred in that regard.⁸ Moreover, their arguments on the merits of their dispute with Midland Power Cooperative and Central Iowa Power Cooperative essentially repeat claims earlier made in other proceedings that they have not been paid an appropriately determined avoided

⁴ *Id.*

⁵ 16 U.S.C. § 824a-3(h)(2) (2012).

⁶ Clarification Order, 162 FERC ¶ 61,188 at P 2.

⁷ *So. Cal. Edison Co.*, 71FERC ¶ 61,090, at 61,305 (1995); *accord NY State Elec. & Gas Corp.*, 72 FERC ¶ 61,067, at 61,340 (1995).

⁸ *Gregory and Beverly Swecker v. Midland Power Coop.*, 149 FERC ¶ 61,236, at P 4 (2014).

(continued ...)

cost rate, and such claims have been addressed in prior judicial and Commission orders.⁹ For these reasons, we deny reconsideration.

The Commission orders:

The Sweckers' request for reconsideration is hereby denied, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *E.g.*, *Swecker v. Midland Power Coop.*, No. 14-2186 (8th Cir. 2015); *Gregory and Beverly Swecker v. Midland Power Coop.*, 162 FERC ¶ 61,146 (2018), *reh'g denied*, 166 FERC ¶ 61,205 (2019).