

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 20-1440****September Term, 2020****FERC-EL14-18-003****FERC-EL14-18-004****Filed On: February 22, 2021**

Gregory R. Swecker and Beverly F. Swecker,

Petitioners

v.

Federal Energy Regulatory Commission,

Respondent

**BEFORE:** Tatel, Millett, and Rao, Circuit Judges**ORDER**

Upon consideration of the motion to dismiss, the response thereto, and the reply, it is

**ORDERED** that the motion to dismiss be granted. The orders that are the subject of this petition interpret the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b), limits judicial review to orders issued in proceedings under that Act—and PURPA’s judicial review provision, 16 U.S.C. § 824a-3(h), is not part of the Federal Power Act. See *Portland General Electric Co. v. FERC*, 854 F.3d 692, 700-01 (D.C. Cir. 2017) (citing *Midland Power Co-op. v. FERC*, 774 F.3d 1, 5-6 (D.C. Cir. 2014)). Therefore, section 313(b) does not give this court jurisdiction to review the orders challenged here. See *Industrial Cogenerators v. FERC*, 47 F.3d 1231, 1234-36 (D.C. Cir. 1995). The challenged orders, which were not “mandatory,” are also not directly reviewable under 16 U.S.C. § 824a-3(h). See *Portland General*, 854 F.3d at 700-01. Petitioners’ only remedy under PURPA is to petition respondent to initiate an enforcement action, and, should respondent decline to do so, petitioners may file an enforcement action in district court. *Id.* at 700 (citing 16 U.S.C. § 824a-3(h)(2)(B)). “[R]eview of section 210(h) enforcement actions occurs on appeal from a district court’s final decision.” *Id.* (citing *Industrial Cogenerators*, 47 F.3d at 1234).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is

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directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/  
Manuel J. Castro  
Deputy Clerk