

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Roger & Emma Wahl

v.

Docket No. EL06-65-000

Allamakee-Clayton Electric Cooperative

NOTICE OF INTENT NOT TO ACT

(Issued June 15, 2006)

1. In this notice we decline to initiate an enforcement action pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ As a result Roger and Emma Wahl may bring an enforcement action directly in the appropriate court.

Background

2. Roger and Emma Wahl are homeowners in Lawler, Iowa. In 2002 and 2003 they installed a 7500 watt wind generator with photovoltaic solar panels at their residence. On April 24, 2006, the Wahls filed a complaint with the Commission seeking a ruling that Allamakee-Clayton Electric Cooperative (the Cooperative) is required by PURPA to purchase the output of the Wahls' generation facility pursuant to a net metering arrangement and that the Cooperative's avoided cost is the rate at which the Cooperative purchases full requirements electric power from its generation and transmission supplier, Dairyland Power Cooperative.

3. Notice of the Wahls' complaint was published in the *Federal Register*, 71 Fed. Reg. 25,833 (2006), with answers, interventions and protests due on or before May 17, 2006. The Cooperative filed a timely answer to the complaint.

4. The Cooperative argues that neither state nor federal law requires it to provide the Wahls a net metering arrangement. The Cooperative also argues that the issues raised by the Wahls' complaint are more properly issues for state court, not the Commission. The

¹ 16 U.S.C. § 824a-3 (2000).

Cooperative further argues that it, in its role as a nonregulated electric utility implementing PURPA, has properly determined its avoided costs. The Wahls filed an answer to the Cooperative's answer.

Discussion

Procedural Matters

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Wahls' answer to the Cooperative's answer and will, therefore, reject it.

PURPA Claim

6. The Wahls' filing is fundamentally a challenge to the Cooperative's implementation of the Commission's PURPA regulations. Accordingly, we will treat the complaint as a petition for enforcement under section 210(h) of PURPA. Section 210(h)(2)(A) of PURPA provides that the Commission may undertake an enforcement action to require a "nonregulated electric utility" to implement the Commission's regulations under PURPA.

7. The Commission's enforcement authority under section 210(h)(2)(A) of PURPA, 16 U.S.C. § 824a-3(h)(2)(A) (2000) is discretionary. As the Commission pointed out in its 1983 Policy Statement, "the Commission is not required to undertake enforcement action."² If the Commission chooses not to undertake an enforcement action within 60 days of the filing of the petition, the petitioner may then bring an enforcement action directly against the utility in the appropriate court.³

8. The Wahls seek two determinations from the Commission: (1) that they are entitled to a net metering arrangement; and (2) that the Cooperative's avoided cost is the rate it pays its full requirements supplier. We decline to make determinations on either matter.

² *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978*, 23 FERC ¶ 61,304 at 61,545 (1983) (Policy Statement).

³ *Id.*

9. The Commission recently addressed the issue of net metering.⁴ The Commission noted that Congress had amended section 111(d) of PURPA by its passage of the Energy Policy Act of 2005 (EPAct (2005))⁵ and addressed net metering. In section 1251 of EPAct 2005, Congress revised PURPA to require state regulatory authorities and nonregulated utilities to consider adopting net metering. Section 1251 of EPAct 2005, which amended PURPA, provides that each state regulatory authority and each nonregulated utility shall consider “mak[ing] available upon request net metering service to any electric consumer that the electric utility serves” within two years of enactment of EPAct 2005 and shall complete consideration of this new standard within three years of enactment. The Commission in *Swecker* concluded that Congress had provided a specific process for states and nonregulated utilities to consider whether to make net metering available, and that the Commission should not intrude further -- that it was not appropriate for the Commission to go to court to require a nonregulated electric utility to provide net metering when Congress had enacted a specific provision of law that directed the nonregulated electric utility to consider whether or not to provide net metering on its own.⁶ For those same reasons, we do not believe it appropriate to consider the Wahls’ claim that they are entitled to a net metering arrangement.

10. Nor do we find any merit in the Wahls’ contention that the Cooperative’s avoided cost should be the price at which it purchases power from its supplier, rather than the supplier’s avoided cost which the Cooperative is using as its avoided cost. The Cooperative’s calculation of avoided cost is consistent with the Commission’s regulations and precedent. In Order No. 69,⁷ the Commission determined that the avoided cost of a full requirements customer is the avoided cost of the full requirements supplier because it is the supplier that avoids generation when the full requirements customer purchases from a QF. The Commission has consistently followed this rule.⁸

⁴ *Gregory Swecker*, 114 FERC ¶ 61,205, *reconsideration denied*, 115 FERC ¶ 61,084 (2006) (*Swecker*).

⁵ Pub. L. 109-58, §1251, 119 Stat. 594, 962 (2005).

⁶ 114 FERC ¶ 61,205 at P 28.

⁷ *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, FERC Stats. & Regs. ¶ 30,128 at 30871, 45 Fed. Reg. 12,214 (1980).

⁸ *See, e.g., City of Longmont*, 39 FERC ¶ 61,301 (1987); *Carolina Power & Light Co.*, 48 FERC ¶ 61,101 at 61,390 (1989); *North Little Rock Cogeneration, L.P. and Power Systems, Ltd. v. Entergy Services, Inc. and Arkansas Power & Light Company*, 72 FERC ¶ 61,263 at 62,172 (1995).

11. Notice is hereby given that the Commission declines to initiate an enforcement action under section 210(h)(2)(A) of PURPA.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.