

FEDERAL ENERGY REGULATORY COMMISSION

WELCH MOTEL, INC.,
WELCH OIL, INC.,
BOONDOCKS USA TRUCK STOP, and
BOB WELCH,

Docket No. _____

Complainants,

COMPLAINT for Enforcement of
PURPA

vs.

MIDLAND POWER COOPERATIVE, and
CORN BELT POWER COOPERATIVE
Respondents.

Dear Secretary,

Please docket this complaint against Midland Power Cooperative and Corn Belt for enforcement of the Public Utility Regulatory Policies Act under the Simplified Procedure for Complaints Involving Small Controversies

Welch Motel, Inc.
Welch Oil, Inc.
Boondocks USA Truckstop
Bob Welch
3065 220TH ST
Williams, Iowa 50271-7518
Complainants

Midland Power Cooperative
1005 East Lincolnway
Jefferson, Iowa 50129
Respondent

Corn Belt Power Cooperative
1300 13th Street North
PO Box 508
Humboldt IA 50548
Respondent

Welch Motel, Inc., Welch Oil, Inc., Boondocks USA Truckstop (“Boondocks”) and Bob Welch (collectively “Complainants”) bring this Complaint against Midland Power Cooperative (“Midland”) and Corn Belt Power Cooperative (“Corn Belt”)(collectively “Respondents”) for enforcement of 18 CFR § 292.304. Specifically, the Complainants request an order from this Commission for enforcement of PURPA to (a) allow the Complainants to enter into a contract to consume all of the electric energy and capacity generated by their wind turbine at 3065 220TH ST, Williams Iowa 50271-7518 before drawing power from Midland; (b) require Midland to program its electric meter in such a way that Complainants are not billed for electricity from Midland until Complainants have consumed all of their electric energy from their wind turbine or, (c) in the alternative, if the Commission fails to act within the 90 days, to be allowed to enter into any court, whether federal or state, for enforcement of PURPA.

BACKGROUND

1. This case brings before the Commission one of the Respondents’ many tactics to avoid competition from alternative energy: programming a meter so that all production from a wind turbine is directed to Corn Belt and all electric needs are provided by Midland and billed to the QF at Midland’s retail rate.
2. Welch Motel, Inc., Welch Oil, Inc., Boondocks USA Truckstop and Bob Welch installed a 65K W Windmatic 158 Wind Turbine at 3065 220th Street, Williams, Iowa in 1996 to offset the electrical load at the truck stop and motel.
3. At the time the Complainants installed the wind turbine, Midland Power Cooperative, which distributes power for Corn Belt, provided power to the truck stop and motel.
4. Before purchasing and installing the wind turbine, Bob Welch met with Midland’s then manager, Don Severson, who told him that Midland would install a meter that would allow

the Complainants to use all of the power from the turbine before any of Midland's power would be sold to them. In fact, the Midland tariff in effect at that time provided that an energy producer using a renewable source who obtained Qualified Facility ("QF") status from FERC could use the output of the QF turbine to offset its electrical needs. Midland would purchase any excess power at four cents per kilowatt hour.

5. Midland and Corn Belt obtained a waiver from FERC on September 15, 1994. The waiver provided that Complainants would sell excess electric energy to Corn Belt, which had a full service contract with Midland.
6. Upon obtaining the waiver from FERC, Midland adopted a new standard Co-Generation contract for QFs and refused to offer or enter into any other contract with present QFs and others who wished to install a renewable energy source. The new tariff, 26.18, charged Co-Generators an \$86.00 a month service charge, a coincidental demand charge of \$14.90 between the hours of 7:00 PM and 9:00 PM, and a 3 cent energy charge. QFs were to receive 2 cents per kilowatt hour from Corn Belt.
7. Compared with the previous tariff, the new post-waiver tariff raised the monthly service charge by \$50.00 a month, added a \$14.90 coincidental demand charge, and lowered the amount QFs received for excess energy from 4 cents to 2 cents per kilowatt hour.
8. Corn Belt's Qualifying Facility Purchase Rate Schedule mandates the use of separate meters for energy sold to Corn Belt and energy supplied by another utility, despite the fact that this Commission held in the Mid America case that two meters are not required. The Corn Belt rate schedule specifically states: "Any electric service delivered by any utility to the QF shall be metered separately and billed under a separate agreement and applicable rate schedule."

9. Midland insisted that Gregory Swecker, another QF in Iowa, sign another new tariff. 26.16, which was basically the same as 26.18 except that the coincidental demand time period was expanded from two hours to four. Swecker challenged the evident discriminatory nature of the new tariffs before the Iowa Utility Board. The Complainants intervened in the action, docket number FCU-99-3, and testified concerning the discriminatory nature of 26.18.
10. After an extensive investigation, the Iowa Utility Board ruled that tariffs 26.16 and 26.18 were unreasonably discriminatory, in violation of Iowa Code 476.21. The Board ordered Midland to change the backup rate to the same as charged to customers who do not have a renewable energy source. Additionally, the Board ruled that the Complainants had the option of switching from 26.18 to the regular small 3 phase rate of tariff 26.11.

THE METER and TARIFF ISSUES

11. Despite the Board's Order, Midland refused to permit the Complainants to sign tariff 26.11 and continues to bill them under tariff 26.18. The Complainants have converted all bills to tariff 26.11 and have paid Midland pursuant to that tariff.
12. The Complainants have terminated their contract with Midland on several occasions (the latest termination was on April 2008) and offered Midland a contract stating that no electricity or capacity will be available for sale to Midland until all of the Complainants needs for the month have been met. Midland refuses to sign the contract.
13. Midland has installed an electronic meter at the Complainants' location. Complainants have been informed that the meter can be programmed to register production of the turbine as sales to Midland at any time through a laptop computer, handheld device, through the phone line, and through the electric power line without the utility customer's knowledge or consent. Midland has tampered, removed, replaced, set the meter back to zero without the Complainants' acknowledgement or approval.

14. Midland has programmed the electronic meter to (a) direct all of the production of the wind turbine to sales to Corn Belt and (b) charge their electric consumption at the Midland retail rate. Midland's programming of the meter so that Complainants buy all of their electrical needs from Midland is evident from this simple fact: the Complainants' bill does not change when the turbine is not used. The Complainants learned this fact by hiring a third-party to check their meter.
15. Complainants have been forced to purchase their own meter, one that is approved by the national metering association, and will have the meter installed by their own electrician. The new meter will accomplish parallel operation by determining the net kilowatts that pass through it on a monthly basis. The readings from this meter will comply with Midland filed tariff 26.11
16. The Midland meter does not display the different register between the motel and the turbine, multiplier, PKH CTR, or the VTR as required by the State of Iowa.
17. Moreover, Complainants have taken pictures of the meter readings on a monthly basis from May 2008 to the present. The pictures, which are taken 2 to 3 days after Midland reads the meter, show that Midland has overcharged Complainants by 2000-2400 kilowatt hrs every month.
18. The Complainants' investigation also revealed that Corn Belt Power has over charged the Complainants coincidental demand charges starting as early as 6:00PM despite the fact that its filed tariff states that coincidental demand charges do not begin until 7:00 PM.
19. Complainants have filed a complaint for improper metering and billing by Midland Power with the Iowa Attorney General, and their complaint has been forwarded to the Iowa Utility Board, where it has been docketed under Case No C-08-113. The state complaint is still under investigation.

MIDLAND AND CORN BELT'S ACTIONS VIOLATE PURPA

20. This commission has jurisdiction under the Public Utility Regulatory Policies Act for enforcement of PURPA against a non rate regulated utilities such as Midland. The amount in controversy is less than \$100,000. The complaint raises billing and metering issues between Complainants and Respondents. Complainants are unaware of an impact on other entities.
21. The United States Supreme Court held in *American Paper Institute v. American Electric Power* that the owner of a renewable source has the right to consume its own power when the retail rate is higher than the utilities' avoided costs. Midland's retail rate is substantially higher than Corn Belt's rate for excess energy.
22. 18 CFR 292.303 requires Midland to offer to operate in parallel with QFs such as the Complainants, but Midland refuses to enter into a contract for parallel operations. Instead, Midland bills the Complainants pursuant to a tariff that the Iowa Utility Board has found to be discriminatory against operators of renewable energy sources.
23. Midland's insistence on using the illegal tariff also violates the Complainants' rights under 18 CFR 292.304 to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term.
24. The question whether Midland could program an electric meter so that all energy generated by a QF is sold to Corn Belt and all electricity consumed is provided by Midland and billed at Midland's retail rate was not before the Commission when it granted the waiver.
25. The complainants do not wish to sell power to Corn Belt Power or Midland because, at this time, their load exceeds their ability to generate excess electric for sale.
26. Midland's electronic meter is equivalent to, and accomplishes the same effect as, a two-meter system: One meter to measure the electric output and capacity of the renewable energy

source and one meter to measure the consumption of the QF load. This arrangement violates this Commission's order in the Mid American case. Mid American argued to FERC that two meters are required to determine the kilowatts for billing purposes. Rejecting Mid America's argument, this Commission held that there are no requirements for two meters to be used with blockers or detents installed to determine the kilowatts that would be available for sale. The same thing is being required by Midland's electronic meter by blocking parallel operation. Midland cannot be allowed to circumvent this Commission's ruling in Mid America by using an electronic meter that operates as a two-meter system.

27. By (a) insisting that Complainants enter into a discriminatory, illegal tariff, (b) programming its meter to buy all power generated by Complainants and to bill Complainants for all of their electrical needs at Midland's retail rate, and (c) by falsifying meter readings, Midland and Corn Belt have conspired to violate the orders of the Iowa Utility Board, the orders of this commission, and the mandates of PURPA.
28. The complainants request an order from this commission for enforcement of PURPA to (a) allow this complainant to enter into a contract to consume all of its electric energy and capacity at the Boondocks location, 3065 220TH ST, Williams Iowa 50271-7518, and (b) require Midland and Corn Belt to program their meter so that the Complainants consume all energy generated by their wind turbine before purchasing any power; or, (c) in the alternative to be allowed to enter into any court whether federal or state for enforcement of PURPA if the Commission fails to act within the 90 days.

Respectfully submitted this 16th day of December, 2008.

SUSAN LaCAVA, SC

/s Susan LaCava

Susan LaCava

Document Content(s)

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