

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Lumberton Power, LLC

Docket No. ER06-1375-000

ORDER DENYING MOTION TO INTERVENE OUT-OF-TIME

(Issued January 26, 2007)

1. On October 16, 2006, the Commission issued an order accepting a market-based rate tariff filed by Lumberton Power, LLC (Lumberton).¹ On October 23, 2006, Alamac American Knits LLC (Alamac) filed a motion to intervene out-of-time and protest. Alamac supplemented its filing on December 4, 2006. In this order, the Commission denies Alamac's motion to intervene out-of-time.

I. Background

2. Alamac is a manufacturing company based in Lumberton, North Carolina. Alamac states that it currently has a Steam Purchase Agreement (SPA) with Lumberton whereby Lumberton is to provide Alamac with a continuous level of steam power for an initial term of ten years.² Alamac contends that Lumberton experienced a computer system breakdown on June 5, 2005, which halted steam power generation and its delivery to Alamac's manufacturing facility. Alamac asserts that since June 5, 2005, Lumberton has not provided it with the contracted steam power pursuant to the SPA.

3. Alamac states that it is currently pursuing arbitration to compel Lumberton to honor its obligations under the SPA and to reimburse Alamac for substantial costs Alamac has incurred as a result of Lumberton's failure to provide steam power. Alamac also states that granting Lumberton's request for market-based rate authority would impair Alamac's contractual rights. Alamac contends that with Lumberton's application pending before the Commission, arbitration alone cannot ensure that Alamac's rights under the SPA are protected.

¹ *Lumberton Power, LLC*, 117 FERC ¶ 61,050 (2006) (October 16 Order).

² Alamac states that it has the right to exercise a six year renew option at the end of its initial term.

4. Alamac, in its December 4, 2006 supplement, explains that it learned that the Commission approved Alamac's request for market-based rate authority prior to Alamac filing its motion to intervene out-of-time and protest.³ Alamac elaborates that it is concerned that approval of Lumberton's application to sell power to the grid would create an incentive for Lumberton to only produce steam power intermittently based on fluctuations in the energy market rather than provide the contracted continuous steam power pursuant to the SPA. Alamac requests that continued approval of Lumberton's application for market-based rate authority be conditioned upon Lumberton honoring the existing contractual obligations under the SPA. Alamac further requests that any final approval of Lumberton's application for blanket approval of all issuances of securities should be withheld until Alamac has an opportunity to demonstrate that its existing contractual rights have been impaired and would continue to be impaired absent a condition requiring Lumberton to honor its obligations under the SPA.

5. In support of its motion to intervene out-of-time, Alamac states that Lumberton did not provide it with a copy of the application for market-based rate authority at the time of filing. Alamac states that it has a material interest in this proceeding which cannot be adequately represented by any other participant and that the Commission's consideration of Alamac's contractual rights will not disrupt these proceedings, but will ensure that the disposition is consistent with Lumberton's contractual obligations to Alamac.

II. Discussion

6. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.⁴ Even though Alamac states that Lumberton did not provide Alamac with a copy of its application at the time of filing, we note that the Commission properly noticed Lumberton's application in this docket.⁵

³ The December 4 supplement contains a letter from Alamac to Lumberton which Alamac claims describes the series of events which have occurred.

⁴ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

⁵ The Commission published notice of Lumberton's filing in the *Federal Register* on August 30, 2006, 71 Fed. Reg. 51,601 (2006). See 18 C.F.R. § 385.2009 (2006). See also 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

Accordingly, Alamac has failed to meet its burden to justify the granting of its motion to intervene out-of-time in this proceeding. The Commission denies Alamac's motion to intervene out-of-time. In any event, we note that nothing in our grant of market-based rate authority to Lumberton adversely effects previously negotiated contractual obligations. Likewise, nothing in our approval of issuances of securities or assumptions of liability by Lumberton adversely effects previously negotiated contractual obligations.

The Commission orders:

Alamac's motion to intervene out-of-time is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.