

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

American Electric Power Service Corporation

Docket No. ER05-435-001

ORDER DENYING LATE MOTION TO INTERVENE AND DISMISSING
REHEARING REQUEST

(Issued June 8, 2005)

1. In this order, we deny EnviroPower LLC (EnviroPower) and its affiliate Kentucky Mountain Power, LLC's (Kentucky Mountain Power) motion for leave to intervene out of time and dismiss its request for rehearing of an unpublished letter order issued pursuant to delegated authority in this proceeding on February 12, 2005 (February 12 Letter Order). The February 12 Letter Order accepted a notice of cancellation, filed by American Electric Power Service Corporation (AEP), of an Interconnection and Operation Agreement (IA) with Kentucky Mountain Power.

Background

2. The IA provides for the interconnection of Kentucky Mountain Power's planned generating station (to be located in Hazard, Kentucky) to the AEP transmission system. It was originally filed by AEP on July 2, 2001, and was accepted to become effective August 31, 2001.¹

3. On November 17, 2003, in Docket No. ER04-200-000, AEP filed a notice of cancellation of the IA. AEP claimed that such cancellation was justified under the terms and conditions of the IA, which provides that, unless a default is cured within 120 days of the customer's receipt of notice of default, AEP can terminate the IA. AEP stated that Kentucky Mountain Power had long been in default of its obligation to provide security and required monthly payments under the IA. AEP stated that it had exercised considerable forbearance in enforcing the IA, working with Kentucky Mountain Power to cure the default through various meetings, calls and e-mails and extending the time to cure the default on four occasions.

¹ See *AEP Operating Companies*, Docket No. ER01-2488-000 (August 2, 2001)(unpublished letter order).

4. AEP's notice of cancellation was accepted by an unpublished letter order issued pursuant to delegated authority in that proceeding on January 13, 2004 (January 13 Letter Order).
5. On February 11, 2004, EnviroPower filed a motion to intervene out of time and a request for rehearing of the January 13 Letter Order.
6. On March 9, 2004, AEP notified the Commission that it had been contacted by the Commission's Alternative Dispute Resolution (ADR) staff in an effort to resolve the matters raised in EnviroPower's February 11, 2004 Filing, and asked the Commission to defer action on that filing pending the results of those discussions.
7. On April 29, 2004, in Docket No. ER04-840-000, AEP filed an application to reinstate the IA, and EnviroPower filed a motion to withdraw its February 11, 2004 pleading, conditioned on the Commission's acceptance of AEP's application to reinstate the IA. AEP's filing to reinstate the IA was accepted by unpublished letter order issued pursuant to delegated authority in that proceeding on June 16, 2004.
8. On January 11, 2005, AEP submitted a new notice of cancellation of the IA.² AEP stated that a copy of the filing was served upon Kentucky Mountain Power and the Kentucky Public Service Commission. Notice of the notice of cancellation was published in the *Federal Register*, 70 Fed. Reg. 3698 (2005), but no interventions or protests were filed. The apparently uncontested notice of cancellation was accepted in the February 12 Letter Order.
9. On March 14, 2005, EnviroPower filed a motion for leave to intervene out of time and request for rehearing of the February 12 Letter Order.
10. In support of its motion for leave to intervene out of time, EnviroPower states that it lacked notice of the activities in this docket due to EnviroPower and Kentucky Mountain Power's omission from the service list when the Commission changed the docket for the filing from ER04-200 to ER05-435. EnviroPower states that it was not served the Commission's notice of filing³ and did not receive notice of the opportunity to intervene in this case until EnviroPower received the letter order.

² While AEP nominally filed in Docket No. ER04-200-000, the Commission corrected the docket number to reflect that the filing was a new notice of cancellation and hence a new filing—assigning the filing Docket No. ER05-435-000. *See, e.g., Michigan Public Power Agency v. FERC*, 963 F.2d 1574, 1579 (D.C. Cir. 1992) (Commission has discretion in its procedures and the managing of its proceedings).

³ The Commission's notices are typically published in the *Federal Register*. *See* 18 C.F.R. § 2.1(a) (2004). They (and the related filings) are also available electronically through the Commission's website.

11. EnviroPower requests that the Commission reconsider acceptance of the notice of cancellation. It argues that AEP's transfer of operational control over its transmission system to PJM Interconnection, LLC (PJM), a Commission-approved Regional Transmission Organization, impaired AEP's ability to perform under the IA. In addition, it argues that Kentucky Mountain Power's own ability to perform under the IA was improperly impaired by the conduct of East Kentucky Power Cooperative, Inc. (East Kentucky) in the course of East Kentucky's procurement of power resources, which, at EnviroPower's insistence, is now under investigation by the Kentucky Public Service Commission.

12. Finally, EnviroPower claims that the termination of the IA creates manifest injury to the public interest, as the results of system impact studies concerning the Kentucky Mountain Power facility performed by AEP demonstrate marked improvement in system stability resulting from interconnection of the generator.

13. On March 29, 2005, AEP filed an answer. AEP states that it takes no position on EnviroPower's discussion of the claimed procedural difficulties that led EnviroPower to its not receiving notice. However, AEP strongly opposes the motion to intervene out of time and the request for rehearing.

Discussion

14. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits an answer to a request for rehearing. Accordingly, we will reject AEP's answer.

15. We will deny EnviroPower and Kentucky Mountain Power's motion to intervene out of time and dismiss the request for rehearing.

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2004), we will deny EnviroPower and Kentucky Mountain Power's motion to intervene in this proceeding for failure to demonstrate good cause warranting late intervention. The Commission has found that parties seeking to intervene after issuance of a Commission determination in a case bear a heavy burden. 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 the granting of such late intervention. EnviroPower and Kentucky Mountain Power have not met their burden of justifying late intervention.⁴

⁴ *Midwest Independent Transmission System Operator*, 102 FERC ¶ 61,250 at P 7 (2002).

17. As previously noted, notice of AEP's January 11, 2005 Filing was published in the *Federal Register*. Publication of notice in the *Federal Register* provides constructive, and adequate, notice.⁵ Moreover, in the instant proceeding, AEP states that it served its filing on Kentucky Mountain Power, and EnviroPower, and these parties do not dispute receiving such service.

18. As EnviroPower and Kentucky Mountain Power are not parties to this proceeding, they may not seek rehearing of the February 12 Letter Order, and their request for rehearing will be dismissed on that basis.⁶

The Commission orders:

EnviroPower and Kentucky Mountain Power's motion for leave to intervene out of time is hereby denied, and its request for rehearing of the Commission's February 12, 2005 letter order is hereby dismissed as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ *Point Arguello Natural Gas Line Co.*, 31 FERC ¶ 61,257 at 61,501, *reh'g dismissed*, 32 FERC ¶ 61,130 (1985); *Pontook Operating Limited Partnership v. Public Service Company of New Hampshire*, 94 FERC ¶ 61,144 at 61,550 & n.6 (2001).

⁶ As previously noted, EnviroPower and Kentucky Mountain Power did not file a timely motion to intervene in Docket No. ER04-200-000.