

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alcoa Power Generating, Inc.

Project No. 2197-073

NOTICE DENYING MOTION TO INTERVENE

(May 30, 2013)

On December 28, 2006, Commission staff issued a public notice of an application for a new major license filed by Alcoa Power Generating, Inc. (Alcoa Power) for the Yadkin Hydroelectric Project No. 2197, located on the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly Counties, North Carolina. The notice established February 26, 2007, as the deadline for filing motions to intervene. On April 30, 2013, New Energy Capital Partners, LLC (New Energy) filed a late motion to intervene in the proceeding. No timely answers or comments to the motion were filed.¹

Movants for late intervention must, among other things, demonstrate good cause why the time limit should be waived.² In determining whether to grant late intervention, Rule 214 of the Commission's Rules of Practice and Procedure states that the Commission may consider such factors as whether the movant had good cause for filing late, whether the movant's interest is adequately represented by other parties to the proceeding, and whether granting the intervention might result in disruption of the proceeding or prejudice to other parties.³

New Energy states that it has good cause because it is a competitor of Alcoa Power and its interests did not arise until late 2010, following three events: (1) Alcoa, Inc., Alcoa Power's parent, decided to demolish the Badin Works plant in March 2010; (2) the North Carolina Department of Environment and Natural Resources revoked Alcoa Power's water quality certification in December 2010; and (3) the Uwharrie Regional Resources Commission formed in 2010.⁴ New Energy also asserts that no other party to the proceeding can adequately represent their interests.

¹ On May 20, 2013, the Trading Ford Historic District Preservation Association filed a late comment in opposition to the motion, and on May 24, 2013, Alcoa Power filed a late answer in opposition to the motion.

² 18 C.F.R. § 385.214(b)(3) (2012).

³ 18 C.F.R. § 385.214(d) (2012).

⁴ New Energy April 30, 2013 Motion for Late Intervention at pp. 24-25.

New Energy has not demonstrated good cause for late intervention. The events identified by New Energy are not sufficient to show good cause why the deadline should be waived, particularly where, as here, the motion is filed six years after the deadline. The Commission issued public notice of the relicensing application on December 28, 2006, and published notice in the *Federal Register* on December 29, 2006.⁵ New Energy therefore was on notice of the licensee's application, but failed to timely respond to it.

The Commission expects parties to intervene in a timely manner based on the reasonably foreseeable issues arising from the applicant's filings and the Commission's notice of proceedings.⁶ The Commission has held that the party bears the responsibility for determining when a proceeding is relevant to its interests, such that it should file a motion to intervene. When a party fails to intervene in a timely fashion, the party assumes the risk that the case will be settled in a manner that is not to its liking.⁷ The Commission has previously explained that an entity cannot "sleep on its rights" and then seek untimely intervention.⁸ Moreover, even assuming the events demonstrate good cause for waiving the deadline, New Energy offers no credible reason for waiting over two years from the last of those events to file its motion for late intervention.

New Energy has failed to meet the good cause standard for granting late interventions, and therefore, its motion for late intervention is denied.

This notice constitutes final agency action. Requests for rehearing by the Commission of this denial must be filed within 30 days of the date of issuance of this notice, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l(a) (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012).

Kimberly D. Bose,
Secretary.

⁵ 71 Fed. Reg. 78,424-01 (2009).

⁶ See *California Water Resources Department & the City of Los Angeles*, 120 FERC ¶ 61,057, at n.9 (2007) (*California DWR*), *reh'g denied*, 120 FERC ¶ 61,248 (2007), *aff'd*, *California Trout & Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

⁷ *California DWR*, 120 FERC ¶ 61,057 at P 13.

⁸ *Id.* at P 14.

Document Content(s)

P-2197-073 notice.DOC.....	1-2
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