

137 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
John R. Norris, and Cheryl A. LaFleur.

Moussa I. Kourouma d/b/a Quntum Energy LLC

Docket No. IN11-2-000

MOUSSA I. KOUROUMA

(Issued December 14, 2011)

1. On June 16, 2011, the Commission issued an order finding that Moussa I. Kourouma (the respondent) had violated section 35.41(b)¹ of the Commission's regulations, which prohibits the submission of false or misleading information or the omission of material information in any communication with the Commission or a Commission-approved regional transmission organization, and directing the respondent, pursuant to section 316A of the Federal Power Act,² to pay a civil penalty of \$50,000.³ In this order, we grant a motion for stay of the June 16 Order.

I. Background

2. On January 7, 2011, the Commission's Office of Enforcement Staff (OE Staff) submitted to the Commission an Enforcement Staff Report and Recommendations (OE Staff Report) alleging that the respondent had violated section 35.41(b) of the Commission's regulations by omitting material information about his sole ownership of Quntum Energy LLC (Quntum) and submitting inaccurate information in an application to the Commission seeking market-based rate authority in Docket No. ER09-805-000. Specifically, the OE Staff Report alleged that the respondent used his then one-year old daughter's name as well as the name and mailing address of an acquaintance in communications with the Commission and PJM Interconnection L.L.C. (PJM) in order to hide his participation in the formation and ownership of Quntum and its activities from his former employer, Energy Endeavors LP, in order to circumvent a non-compete clause. The OE Staff Report alleged that the respondent knew that neither his daughter nor his acquaintance had an active management and/or ownership role in Quntum and

¹ 18 C.F.R. § 35.41(b) (2011).

² 16 U.S.C. § 825o-1 (2006).

³ *Moussa I. Kourouma d/b/a Quntum Energy LLC*, 135 FERC ¶ 61,245 (2011) (June 16 Order).

that listing those individuals as Quntum's managers in communications to the Commission and PJM was false and misleading. Similarly, OE Staff found the respondent's failure to identify his direct ownership and management of Quntum was a knowing omission of a material fact in its application for market-based rate authority.⁴

3. On February 14, 2011, the Commission issued an order to show cause and notice of proposed penalty.⁵ In the Show Cause Order, the Commission directed the respondent to file an answer within 30 days showing cause as to why he should not be found to have violated section 35.41(b) in connection with his communications with the Commission and PJM, and why his alleged violation did not warrant the assessment of a civil penalty in the amount of \$50,000. The respondent filed his response to the Show Cause Order on March 16, 2011.⁶

4. In the June 16 Order, the Commission found that the undisputed facts demonstrated that the respondent had violated section 35.41(b).⁷ The Commission also found that a civil penalty of \$50,000 was appropriate in light of the seriousness of the respondent's actions and the lack of any effort by the respondent to remedy his violations.⁸ Given the respondent's representations regarding his financial situation, the Commission found that a payment plan was appropriate. Accordingly, the Commission directed the respondent to pay \$5,000 within 90 days of the issuance of the June 16 Order, with an additional \$9,000 due one year after the issuance of the order and each year thereafter until the respondent's total payments equal \$50,000.⁹ The respondent's first payment of \$5,000 was due September 14, 2011.

5. On July 18, 2011, the respondent filed a request for rehearing and motion for stay of the June 16 Order. Because the respondent filed his request for rehearing and motion for stay after the close of business, the respondent's filings were deemed to have been filed on July 19, 2011. The respondent subsequently withdrew his request for rehearing and motion for stay.

⁴ *Moussa I. Kourouma d/b/a Quntum Energy LLC*, 134 FERC ¶ 61,105, at P 2 (2011) (Show Cause Order).

⁵ *Id.*

⁶ *Moussa I. Kourouma March 16, 2011 Motion for Summary Disposition and Answer* (Show Cause Response).

⁷ June 16 Order, 135 FERC ¶ 61,245 at P 24-27.

⁸ *Id.* P 42-53.

⁹ *Id.* P 57.

6. On August 12, 2011, the respondent filed a petition with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) seeking review of the June 16 Order. On the same day, the respondent filed a motion with the Commission for stay of the June 16 Order pending judicial review.

7. On September 2, 2011, the Commission issued an order denying the respondent's motion for stay of the June 16 Order pending judicial review.¹⁰ The Commission found that the respondent had failed to provide sufficient evidence that he will suffer irreparable injury without a stay.¹¹ The Commission stated that its decision to deny the respondent's motion for stay was without prejudice to the respondent filing a motion for stay with supporting evidence. In order to afford the respondent additional time to prepare a motion for stay, the Commission stated that it would permit the respondent to pay the first installment of the civil penalty assessed against him on or before October 14, 2011 so long as the respondent notified the Commission within two business days of his intention to submit another motion for stay and submitted another motion for stay on or before September 14, 2011.¹²

8. On September 6, 2011, the respondent notified the Commission of his intention to submit another motion for stay on or before September 14, 2011. On September 14, 2011, the respondent filed another motion for stay with additional supporting evidence. In his motion, the respondent stated that he would supplement his motion with additional evidence relating to his financial situation to the extent that additional documentation became available prior to a Commission ruling. On September 23, 2011, and October 24, 2011, the respondent filed additional evidence in support of his motion.

9. On September 29, 2011, Enforcement Staff filed an answer to the respondent's motion for stay and to the supplemental evidence submitted on September 23, 2011.

II. Motion for Stay

10. In his motion, the respondent asks the Commission to defer imposition of the civil penalty assessed against him while the merits of that assessment are subject to judicial review. The respondent argues that a stay is warranted because he will incur substantial and irreparable harm if he is required to pay the civil penalty. In support, the respondent provides an affidavit accompanied by financial records that, according to the applicant, demonstrate that he will suffer irreparable harm if he is required to pay the civil penalty assessed against him. In particular, he states that the evidence demonstrate that the respondent has significant debts that far exceed his limited assets, lives paycheck-to-paycheck, does not have sufficient income to cover monthly expenses, and faces an

¹⁰ *Moussa I. Kourouma d/b/a Quntum Energy LLC*, 135 FERC ¶ 61,157 (2011).

¹¹ *Id.* P 13.

¹² *Id.* P 14.

imminent threat of foreclosure. He claims that the harm that he will suffer if he is required to pay the civil penalty goes well beyond the usual and expected economic costs of compliance, as it threatens his very livelihood. He maintains that adequate compensatory relief will not be available later, even if the civil penalty is overturned on appeal. He further maintains that granting a stay pending judicial review will not harm any other parties. According to the respondent, a stay is warranted because granting his request for relief will neither harm the public interest nor hinder the Commission's enforcement objectives, and he has a compelling interest in maintaining the status quo while his appeal is pending.

III. Enforcement Staff's Answer

11. Enforcement Staff argues that the respondent has failed to provide sufficient evidence that he will suffer irreparable harm without a stay of the June 16 Order. According to Enforcement Staff, the information provided by the respondent's evidence is unverified, incomplete, and not substantially different from the financial information that the Commission considered in reaching its decision in the June 16 Order.¹³

IV. Discussion

12. To assure definiteness and finality in Commission proceedings, the Commission typically does not stay its orders.¹⁴ Based on the current record, however, we find that we should take a different approach and stay our order here. Accordingly, we will grant a stay of the Commission's order assessing a civil penalty against the respondent while his appeal is pending before the D.C. Circuit.

13. The Commission may stay its action when "justice so requires."¹⁵ In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.¹⁶ The key element in the inquiry is irreparable injury to the moving party.¹⁷ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.¹⁸

¹³ Enforcement Staff Answer at 2-3.

¹⁴ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,142, at P 17 (2005) (*Midwest ISO*).

¹⁵ 5 U.S.C. § 705 (2006).

¹⁶ See, e.g., *Midwest ISO*, 111 FERC ¶ 61,142 at P 18.

¹⁷ *Id.*

¹⁸ *Id.*

14. The standard for showing irreparable harm is strict. In *Wisconsin Gas Co. v. FERC*,¹⁹ the D.C. Circuit recognized that although the concept of irreparable harm does not readily lend itself to definition, courts have developed well-known principles to guide a determination, which include that the injury must be both certain and great, actual and not theoretical, and that “injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time.”²⁰ Implicit in these principles is the further requirement that the movant substantiate the claim that irreparable injury is “likely” to occur.²¹ Bare allegations that irreparable harm is “likely to occur are of no value since the Commission must decide whether the harm will *in fact* occur.”²² The movant must provide proof indicating that the harm is certain to occur in the near future.²³ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.²⁴

15. We have considered the respondent’s request for a stay in light of the legal standards described above and find that justice requires granting a stay of the June 16 Order. While the economic consequences of enforcing an order do not typically constitute irreparable harm,²⁵ economic loss may rise to the level of irreparable harm in some cases.²⁶ In this case, we conclude that the respondent has provided detailed information concerning his assets and liabilities, including tax information, delinquent bills, and statements from his lenders. This information demonstrates not only that the respondent has limited assets and is unable to meet day to day expenses²⁷—in this regard, we find it significant that he is represented by counsel pro bono—but that he is facing

¹⁹ 758 F.2d 669 (D.C. Cir. 1985).

²⁰ *Id.* at 674.

²¹ *Id.*

²² *Id.* (emphasis in original).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See, e.g., *Washington Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977) (recognizing that the destruction of a business constitutes irreparable injury).

²⁷ The respondent has previously asserted that he has \$30,000 in credit card debt. Show Cause Response at 13, Kourouma Aff. ¶ 22. He has also asserted that he is behind on all of his utility bills and that he fears that his utilities would soon terminate service due to his inability to pay. *Id.* The evidence that he has provided in support of his motion here shows that he still has significant credit card debt and that his utilities may soon terminate service, if they have not already done so.

imminent threat of foreclosure. We note that the respondent's answer to the Show Cause Order indicated that he had an overdue balance of \$9,383.13 on his mortgages and that one of his mortgage companies had started foreclosure proceedings against him.²⁸ We further note that the evidence presented in support of his most recent motion for stay, including statements from mortgage companies and court documents, demonstrates that the overdue balances on his mortgages has increased and that one of his mortgagees is actively pursuing foreclosure on his home. It is this harm, the loss of the respondent's home, that allows the respondent to meet the irreparable harm standard. Even if the respondent were to ultimately prevail on appeal, adequate compensatory or other corrective relief would not be available at that time to compensate him for the loss of his home. Therefore, we find that the respondent has demonstrated that he will suffer irreparable harm absent a stay pending judicial review.

16. Turning to the effect on third parties and the public interest, we find that granting the respondent's motion for stay will not harm other parties and it does not appear that granting the respondent's motion for stay will hamper the Commission's enforcement objectives or otherwise harm the public interest.

17. Accordingly, we will grant the respondent's motion for stay pending review of his appeal by the D.C. Circuit. In the event that the respondent does not prevail on the merits of his appeal, the first installment of the penalty assessed against him as well as any subsequent payments that have become due under the schedule set out in the June 16 Order will become payable immediately.

The Commission orders:

The respondent's motion for stay of the June 16 Order is hereby granted, as discussed in the body of this order.

By the Commission. Commissioners Spitzer and Moeller are not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ *Id.*