

136 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, 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 September 2, 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 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 deny 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

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).

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 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.

4. In the June 16 Order, the Commission found that the undisputed facts demonstrated that the respondent had violated section 35.41(b).⁶ 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.⁷ 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 \$50,000.⁸ The respondent's first payment of \$5,000 is 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.

6. On August 12, 2011, the respondent filed a petition with the United States Court of Appeals for the District of Columbia Circuit seeking review of the June 16 Order. On

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

⁵ *Id.*

⁶ June 16 Order, 135 FERC ¶ 61,245 at P 24-27.

⁷ *Id.* P 42-53.

⁸ *Id.* P 57.

the same day, the respondent filed a motion for stay of the June 16 Order with the Commission seeking a stay of the June 16 Order pending judicial review.

II. Motion for Stay

7. 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 possibly irreparable harm if he is required to pay the penalty.⁹ According to the respondent, civil litigation stemming from the respondent's actions with Quntum and the proceedings before the Commission have drained his limited assets and left him impoverished. The respondent states that his home is currently in foreclosure and that he is struggling to pay basic bills and to support his family.¹⁰ The respondent claims that requiring him to make the initial payment of \$5,000, even if it is later deemed unnecessary on appeal and returned to him, may cause him to lose his home and render him insolvent.¹¹ The respondent further claims that if he is unable to make the first payment in a timely manner, the Commission may initiate collection proceedings. Additionally, the respondent contends that considerations of justice and fairness warrant granting a stay because deferring assessment of the civil penalty until resolution of the respondent's appeal will neither harm the public interest nor hinder the Commission's enforcement objectives.¹²

III. Responsive Pleadings

8. On August 29, 2011, OE staff filed an answer opposing the respondent's motion for stay. OE Staff argues that the Commission should deny the motion for stay because the Commission already considered the respondent's arguments regarding economic harm and inability to pay when determining the appropriate penalty, the respondent has failed to adduce additional evidence in support of his motion, and the pendency of the respondent's appeal alone does not mandate a stay of the Commission's order.¹³

⁹ Motion for Stay at 4.

¹⁰ *Id.*

¹¹ *Id.* at 4-5.

¹² *Id.* at 5.

¹³ OE Staff Answer at 1-3.

IV. Discussion

9. To assure definiteness and finality in Commission proceedings, the Commission typically does not stay its orders.¹⁴ Based on the current record, we are not persuaded that we should take a different approach and stay our order here. Accordingly, we will deny the motion for stay.

10. 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

11. 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

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.*

¹⁹ 758 F.2d 669 (D.C. Cir. 1985).

²⁰ *Id.* at 674.

²¹ *Id.*

²² *Id.* (emphasis in original).

future.²³ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.²⁴

12. In addition, it is well established that economic loss does not, in and of itself, constitute irreparable harm. “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.”²⁵ The courts have recognized, however, that recoverable economic loss may constitute irreparable harm in some cases.²⁶

13. We find that the respondent has not provided sufficient evidence that he will suffer irreparable injury without a stay. Here, the respondent argues that he will “incur substantial and *possibly* irreparable harm.”²⁷ In particular, he claims that requiring the respondent to pay the first installment of the civil penalty assessed against him “*may cause* [him] to lose his home and render him insolvent.”²⁸ As noted above, even assuming that the harm alleged constitutes irreparable harm, in order to prevail, the respondent must show that irreparable harm is *certain* to occur, not that it *may* occur. Moreover, other than these unsupported assertions, the respondent has provided no evidence that requiring him to pay the civil penalty assessed against him in installments while the D.C. Circuit considers the merits of his petition will cause him to lose his home or otherwise render him insolvent. While the respondent refers to pleadings leading up to the June 16 Order,²⁹ the respondent’s assertions contained in those pleadings do not explain how requiring him to pay the civil penalty in installments while the court considers his petition, will cause him to suffer irreparable harm. Additionally, the respondent does not elaborate on his current assets or his current and potential income. The Commission cannot complete a thorough assessment of his financial situation and

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 Motion for Stay at 4.

²⁸ *Id.* at 4-5.

²⁹ Further, we note that while the respondent refers to an answer that he filed on April 28, 2011, the Commission rejected this answer in the June 16 Order. June 16 Order, 135 FERC ¶ 61,245 at 5.

the possible harm that might be caused by the penalty without an understanding of the respondent's complete financial situation. Further, in light of the respondent's history of being less than forthcoming in filings with the Commission, we find the general statements he has provided as supporting evidence to be particularly inadequate.

14. Accordingly, we will deny the respondent's motion for stay. Our decision here is without prejudice to the respondent filing a motion for stay with supporting evidence. We are mindful of the fact that preparing another motion for stay with supporting evidence may take additional time. For this reason, if the respondent notifies the Commission within two business days of the issuance of this order that it plans to submit another motion for stay and he submits such a motion to the Commission on or before September 14, 2011, the first installment of the civil penalty assessed against him, in the amount of \$5,000, will be due on or before October 14, 2011.

The Commission orders:

(A) The respondent's motion for stay of the June 16 Order is hereby denied, without prejudice.

(B) If the respondent notifies the Commission within two business days of his intention to submit an additional motion for stay to the Commission and he submits such a motion to the Commission on or before September 14, 2011, the first installment of the civil penalty assessed against him, in the amount of \$5,000, will be due on or before October 14, 2011.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.