

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Alignis, Inc.

Project Nos. 14896-003
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14898-003
14899-003
14900-003
14901-003
14902-003
14903-003
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ORDER DENYING STAY

(Issued September 19, 2019)

1. On August 19, 2019, Algignis, Inc. (Algignis) filed a motion to stay the dismissal of its 60 preliminary permit applications. Because Algignis has not shown that justice requires a stay, we deny the motion.

I. Background

2. On November 27, 2018, Algignis filed preliminary permit applications for 60 projects to be located at nuclear power plants throughout the United States. As set forth in the applications, the proposed projects would generally be composed of

numerous algae cultivation and retention ponds using the waste heat from the output water of adjacent nuclear power facilities to grow algae.¹

3. On February 22, 2019, Commission staff dismissed the applications, finding that the proposed algae retention ponds did not constitute project works for the development of hydroelectric power as contemplated by the Federal Power Act and thus the Commission did not have jurisdiction over the proposals.

4. On March 22, 2019, Algignis filed a timely request for rehearing, alleging that the Commission improperly and prematurely dismissed its applications.

5. On June 20, 2019, the Commission denied rehearing of staff's dismissal of the preliminary permit applications, finding that the Commission lacks jurisdiction under Part I of the FPA to issue permits or licenses for Algignis's proposals.²

6. On August 19, 2019, Algignis filed a petition for judicial review of the Commission's June 20 order.³ Concurrently, Algignis filed the instant motion to stay the dismissal of its 60 preliminary permit applications pending judicial review.

II. Discussion

7. In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act; that is, the Commission will grant a stay if it finds that "justice so requires."⁴ In determining whether this standard has been met, the Commission considers whether the movant will suffer irreparable injury in the absence of a stay, whether issuance of a stay would substantially harm other parties, and where the

¹ In a subsequent filing, Algignis clarified that, in addition to algae cultivation, its proposed projects would use nuclear waste heat to generate a variety of non-bioplastic products and services. Algignis's March 22, 2019 Request for Rehearing at 3.

² *Algignis, Inc.*, 167 FERC ¶ 61,244 (2019). On July 22, 2019, Algignis filed a request for rehearing of the Commission's order denying rehearing. This request was denied by operation of law. See Secretary's Notice issued August 22, 2019, *Algignis, Inc.*, 168 FERC ¶ 61,107 (2019).

³ *Algignis, Inc. v. Federal Energy Regulatory Commission*, Case No. 19-1169 (D.C. Cir.).

⁴ 5 U.S.C. § 705 (2018).

(continued ...)

public interest lies.⁵ If the movant cannot satisfy the irreparable injury requirement, the Commission need not consider the other factors.⁶ To meet the requirement of irreparable injury for a stay, the injury must be both certain and great, actual and not theoretical.⁷ Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.⁸

8. Algignis requests that the Commission stay the dismissal of its preliminary permits because “[w]ithout [the permits], the financial and regulatory uncertainties doom the projects.”⁹ Algignis also states that the problems associated with toxic algae blooms cannot be solved without Algignis’s projects and that individuals, governments, and businesses affected by toxin-contaminated water will be substantially harmed if the Commission does not grant the stay. Further, Algignis contends that nuclear power plants, which will not be able to monetize their waste heat, will be substantially harmed if the Commission refuses to stay the dismissal.

9. Algignis alleges no specific harm that it will suffer as a result of the Commission not issuing a stay. Rather, Algignis simply states that its projects are doomed without preliminary permits. If the Commission were to grant a stay of the dismissal, Algignis would still lack preliminary permits for its proposals. Should Algignis prevail on appeal, it may file new preliminary permit applications for the Commission’s consideration at that time. Because Algignis has failed to demonstrate irreparable injury, we deny the stay.¹⁰

⁵ *Loup River Public Power Dist.*, 161 FERC ¶ 61,292, at P 20 (2017); *see also Seneca Generation, LLC*, 153 FERC ¶ 61,234, at P 34 (2015).

⁶ *Boyce Hydro Power, LLC*, 165 FERC ¶ 61,027, at P 8 (2018); *see also Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111, at P 9 (2016).

⁷ *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,870 (2001) (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

⁸ *Seneca Generation*, 153 FERC ¶ 61,234 at P 34.

⁹ Algignis’s August 19, 2019 Motion to Stay at 2.

¹⁰ Having found that Algignis will not be irreparably harmed without a stay, we need not consider the other factors. However, we note that the harm Algignis alleges other parties will suffer is unsupported and speculative, and is also not the result of the absence of a stay. None of the harm alleged by Algignis would be cured if the Commission were to grant a stay.

The Commission orders:

The motion to stay filed on August 19, 2019 by Algnis, Inc. is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.